

**WICHITA-SEDGWICK COUNTY**  
**METROPOLITAN AREA PLANNING COMMISSION**

**MINUTES**

**July 7, 2016**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, July 7, 2016 at 1:35 p.m., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Carol Neugent, Chair; David Dennis, Vice Chair (Out @2:35 p.m.); John Dailey; Bob Dool (In @1:36 p.m.); Bill Ellison; David Foster; Matt Goolsby (Out @3:35 p.m.); John McKay Jr. (Out @3:25 p.m.); Debra Miller Stevens; Bill Ramsey (Out @3:35 p.m.); Lowell Richardson and John Todd. Members absent were: Joe Johnson and Chuck Warren. Staff members present were: Dave Barber, Advance Plans Manager; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jess McNeely, Senior Planner; Jeff Vanzandt, Assistant City Attorney; Justin Waggoner, Assistant County Counselor and Maryann Crockett, Recording Secretary.

1. Approval of the May 19, 2016 Planning Commission Minutes.

**MOTION:** To approve the May 19, 2016 Planning Commission minutes.

MCKAY moved, DENNIS seconded the motion, and it carried (8-0-3). GOOLSBY, RAMSEY and NEUGENT – Abstained.

DOOL (In @1:36 p.m.)

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2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

2-1. **SUB2016-00011: One-Step Final Plat - KANSAS HYDROGRAPHICS ADDITION,** located on the north side of East 47th Street South, west of South Woodlawn Boulevard. CHAIR NEUGENT announced that the item had been deferred.

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2-2. **SUB2016-00013: One-Step Final Plat – TIFFANI BREEZE ADDITION,** located on the north side of East 71st Street South, East of South 127th Street East.

**NOTE:** This is unplatted property located in the County. It is designated as “rural area” by the Community Investments Plan 2015-2035. The applicant proposes a zone change (ZON2016-00023) from Rural Residential to Single-Family Residential (SF-20).

**STAFF COMMENTS:**

- A. This plat will be subject to approval of the associated zone change and any related conditions of such a change. Prior to this plat being released for the Board of County Commissioners, the zone change will need to be approved to allow for the lot sizes being platted.

- B. Since sanitary sewer is unavailable to serve this property, the applicant shall contact Metropolitan Area Building and Construction Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- C. The site is currently located within the Sedgwick County Rural Water District No. 3. If service is available, feasible and the property is eligible for service, Metropolitan Area Building and Construction Department recommends connection.
- D. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) along with the corresponding dollar amounts shall be submitted to the Planning Department for recording.
- E. County Stormwater advises that the drainage plan is approved.
- F. County Public Works advises the existing crossroad structure on 71st Street South will need to be relocated to avoid conflict with Suzette Drive or the eastern Suzette Drive will need to be relocated.
- G. County Public Works has approved two street openings along 71<sup>st</sup> Street South.
- H. The applicant shall guarantee the installation of the proposed loop street to the 32-foot suburban street standard.
- I. The Applicant has provided a 70-foot ingress/egress easement and contingent dedication of street right of way extending to the north line of the plat in order to provide potential street connection to adjoining properties.
- J. The ingress/egress easement shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
- K. GIS has approved the street names.
- L. Sedgwick County Fire Department advises that the plat will need to comply with the Sedgwick County Service Drive Code.
- M. In accordance with the Kansas Wetland Mapping Conventions under the Memorandum of Understanding between the United States Department of Agriculture - Natural Resources Conservation Service; United States Environmental Protection Agency; United States Army Corps of Engineers (USACE); and United States Fish and Wildlife Service, this site has been identified as one with potential wetland hydrology. The USACE should be contacted (316-322-8247) to have a wetland determination completed.
- N. County Surveying and MAPD requests review of a pdf prior to mylar submittal. Send to [tricia.robello@sedgwick.gov](mailto:tricia.robello@sedgwick.gov) and nstrahl@wichita.gov.

- O. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- Q. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. The applicant should check City or County GIS mapping to determine whether the location of any taxing district boundaries (e.g. school districts) crosses their property and plan accordingly to avoid unnecessary splitting of lots between taxing districts.
- V. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- W. A compact disk (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).

**STRAHL** reported that the drainage plan has been completed and approved. He said it included several drainage easements and reconfiguration of the internal lots.

**FOSTER** commented that the final drainage plan was not on the drawing provided. He said the final plan does show the drainage reserve inside the inner group of lots.

**STRAHL** briefly reviewed the updated drainage plan indicating the new location of the reserve.

**RICHARDSON** commented that the plat was revised because the first plat had 22 lots which would have triggered the requirement for the developer to pave all of 71<sup>st</sup> Street South. He said he wanted to make the Commissioners aware that in the County, whoever triggers the 21<sup>st</sup> lot is responsible for paving the whole mile. He said the result is no one on that mile can build a home now without paving the street. He said it seems a little bit unfair to him. He asked if the plat triggers that requirement.

**STRAHL** explained that the Subdivision Regulations say any new subdivision or a lot split.

**JUSTIN WAGGONER, ASSISTANT COUNTY COUNSELOR** said the provision is in the Subdivision Regulations and states that if you have more than 200 trips on the road per day (which is calculated at 10 trips per household) that triggers the provision.

**DAILEY** asked if any of the cost of paving is assessed to the existing houses.

**JIM WEBER, DEPUTY DIRECTOR, COUNTY PUBLIC WORKS** said no, current landowners along the road would not be assessed for the paving. He said the policy was established to deal with urban fringe development. He said the problem was developments just off the edge of the city that don't make accommodations for the increased traffic, sewer and water. He said the purpose of the policy is to insure that this type of development doesn't become a burden to the public as a whole when it is established. He said technically, they could develop a petition to force people to pay for paving but it has to be approved by the County Commission. He said it is going to be difficult for the next developer or landowner who wants to build a home along 71<sup>st</sup> Street.

**RICHARDSON** clarified that the petition for paving would have to be a voluntary special assessment that most or all people along the road would need to sign.

**WEBER** responded yes and said you would need at least 51% of the residents. He gave several scenarios of different petitions and said you would still need to convince the County Commission that the petition was fair and equitable.

**MCKAY** asked for clarification that the paving was just to the first entrance of the development.

**WEBER** said no, not in the County. He said the City policy is to the first entrance of the subdivision. He briefly reviewed the aerial and indicated what will need to be paved by the next person trying to develop something along 71<sup>st</sup> Street. He said there is development happening at Cook Airfield and someone may want to live along 71<sup>st</sup> street so Commissioner Richardson was warning everyone in advance that they will have this conversation again one day.

**DAILEY** asked how to change the Subdivision Regulations.

**CHAIR NEUGENT** said that was a discussion for later on in the meeting.

**TODD** asked if the developer was aware of this problem.

**RICHARDSON** commented that they changed the plat to get around it.

**TODD** said “let the buyer beware.”

**CHAD ABBOTT, ABBOTT LAND SURVEYING, AGENT FOR THE APPLICANT** said they are in agreement with staff comments. He said they revised the plat to account for the number of lots so that someone in the future will have to pave the road. He said if they platted 17 lots instead of 18 and someone came in and platted one, then the situation just continues to roll downhill. He said at some point in time, someone is going to end up having to pave the road. He said they are complying with the current Subdivision Regulations.

**DAILEY** clarified that the original plat had 22 lots but the developer cut it down to 18 lots so they would not have to pave the road.

**ABBOTT** said yes, but added that there was some question as to whether 71<sup>st</sup> Street was considered an “arterial” road (since a portion of it has been vacated).

**TODD** asked if the developer considered paying for the pavement and including that in the price of the lots.

**ABBOTT** said yes and indicated they felt it would be cost prohibitive.

**DAILEY** asked if the applicant would agree to a condition that when the street was eventually paved, that the 18 homeowners would pay their fair and equitable share. And that the developer would tell the potential buyers before they buy the lots that was what was going to happen.

**ABBOTT** said he has not had that discussion with his client because staff has not brought that up so at this point in time he would say no, they would not be agreeable to that.

**JUSTIN WAGGONER, ASSISTANT COUNTY COUNSELOR** said he did not think making that requirement would be legal. He referred to the Charter Resolution that gives directions on how to set up a petition and the district for tax purposes and said what Commissioner Dailey was suggesting would be circumventing that process.

**MCKAY** asked about making it contingent that once the road is paved, the lot owners will participate.

**WAGGONER** said he was not sure about that, he would have to check and do more research on that.

**KNEBEL** mentioned that the City has used a “No Protest Petition” in the past where landowners sign that if a benefit district is created in which you are included, you agree not to protest the benefit district.

**DAILEY** suggested deferring the case until they get a solid answer on that.

**WAGGONER** said Mr. Vanzandt mentioned that a contingent could be misconstrued as a tax.

There was brief discussion concerning contingent dedications and other contingencies.

**DENNIS** said he would not vote to approve this the way it is written, so he suggested deferring the item until legal can research the questions the Commission has.

**DAILEY** said he would second that if it was a motion.

**RICHARDSON** said he did not bring the matter up so the Commission would make new policy at today's meeting. He said it sounds like they are getting ready to make an exception for someone who has followed the rules. He said he believes the policy needs to be reviewed; however, he is not sure this is the place to make this exception.

**GOOLSBY** said he agreed with Commissioner Richardson that the Commission can't make an exception for someone who is playing by the rules established by the Subdivision Regulations.

**ABBOTT** said although they understand the Commission's concern, they are following the current Subdivision Regulations. He said no contingency has been brought up or discussed with his client so he requested the current Subdivision Regulations be applied.

**DENNIS** said he didn't know if a contingency was the solution or what so that is why he thought it would be better to defer the matter and let legal take a look at it. He said it is a fairness issue to the next people who buy property out there.

**WAGGONER** said there is a provision for a variance or appeal to the governing body which is the County Commission.

**RAMSEY** said no there is no solution required. The applicant and agent are following the rules.

**CHAIR NEUGENT** reminded the Commission that this item and item #4 ZON2016-00023 were related.

**JEFF VANZANDT, ASSISTANT CITY ATTORNEY** suggested deferring the vote on this item until the Commission has heard ZON2016-00023.

**FOSTER** pointed out that the Staff Report states that this item is contingent upon approval of the zoning case.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**GOOLSBY** moved, **RICHARDSON** seconded the motion, and it carried (11-1).  
**ELLISON** – No.

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**2-3. SUB2016-00019: One-Step Final Plat – FAWN GROVE ADDITION**, located South of Kellogg, West of Greenwich.

**NOTE:** This is a replat of Lot 1, Block 1, Fawn Grove at Sunset Lakes Addition. The applicant proposes duplexes and triplexes (23 total units) on property zoned General Office (GO).

**STAFF COMMENTS:**

- A. City of Wichita Public Works and Utilities Department requests a petition for extension of sewer (laterals) and water (distribution). In-lieu-of-assessment fees are due on water (transmission). Water meters will set in the east easement. Developer will be responsible for boring service lines under the street.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) along with the corresponding dollar amounts shall be submitted to the Planning Department for recording.
- C. City Stormwater Management has approved the drainage plan.
- D. Due to the platting of a 32-foot residential street in a commercial zoning district, a restrictive covenant is needed limiting the site to residential uses.
- E. The applicant shall guarantee the paving of the proposed street. The Subdivision Regulations limit cul-de-sac streets to 24 units accessed by a 32-foot narrow local residential street and this 23-unit plat complies.
- F. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a restrictive covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- G. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- H. City Fire Department has approved the turnaround.
- I. Since this plat proposes the platting of narrow street right of way with adjacent 15-foot street, drainage and utility easements, a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- J. GIS has approved the street name.
- K. City Environmental Health Division advises that any wells installed on the property for irrigation purposes will have to be properly permitted, installed and inspected.

- L. County Surveying and MAPD requests review of a pdf prior to mylar submittal. Send to [tricia.robello@sedgwick.gov](mailto:tricia.robello@sedgwick.gov) and [nstrahl@wichita.gov](mailto:nstrahl@wichita.gov).
- M. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- O. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. The applicant should check City or County GIS mapping to determine whether the location of any taxing district boundaries (e.g. school districts) crosses their property and plan accordingly to avoid unnecessary splitting of lots between taxing districts.
- T. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- U. A compact disk (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).



**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**DENNIS** moved, **RICHARDSON** seconded the motion, and it carried (12-0).

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**2-4. SUB2016-00020: One-Step Final Plat – TYLER’S LANDING 6TH ADDITION,**  
located on the southeast corner of 37th Street North and Tyler Road.

**NOTE:** This is a replat of Lot 14, Block A Tyler’s Landing 5<sup>th</sup> Addition. An amendment to the Tyler’s Landing Commercial Plaza Community Unit Plan (CUP2014-13, DP-267) was approved to allow residential uses.

**STAFF COMMENTS:**

- A. City of Wichita Public Works and Utilities Department requests a petition for extension of sewer (laterals) and water (distribution).
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) along with the corresponding dollar amounts shall be submitted to the Planning Department for recording.
- C. City Stormwater Management has approved the drainage plan.
- D. The platlor’s text shall include language that “No signs, light poles, private drainage systems, masonry trash enclosures or other structures shall be located within public utility easements.”
- E. Traffic Engineering has approved the access controls. The plat proposes complete access control along Tyler Road and a rights-in/out private street opening along 37<sup>th</sup> Street North.
- F. City Fire Department has approved the turnaround.
- G. The applicant shall guarantee the paving of the private street (Reserve A) to a public street paving standard as required by City Public Works. As private improvements, such guarantee shall not be provided through the use of a petition.
- H. A restrictive covenant shall be submitted regarding the private street, which sets forth ownership and maintenance responsibilities.
- I. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners’ association prior to recording the plat or shall submit a restrictive covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- J. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.

- K. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- L. GIS has approved the street name.
- M. County Surveying advises that on the mortgage holder consent for Legacy Bank the plat name needs changed from Tyler's Landing 5th to Tyler's Landing 6th.
- N. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- O. City Environmental Health Division advises that any wells installed on the property for irrigation purposes will have to be properly permitted, installed and inspected.
- P. County Surveying and MAPD requests review of a pdf prior to mylar submittal. Send to [tricia.robello@sedgwick.gov](mailto:tricia.robello@sedgwick.gov) and nstrahl@wichita.gov.
- Q. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- R. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- S. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- T. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- U. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- V. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- W. Perimeter closure computations shall be submitted with the final plat tracing.
- X. The applicant should check City or County GIS mapping to determine whether the location of any taxing district boundaries (e.g. school districts) crosses their property and plan accordingly to avoid unnecessary splitting of lots between taxing districts.
- Y. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- Z. A compact disk (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disk. If a disk is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**DENNIS** moved, **RICHARDSON** seconded the motion, and it carried (12-0).

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**3. PUBLIC HEARING – VACATION ITEMS**

- 3-1. VAC2016-00019: City request to vacate a portion of a platted setback on property,**  
located north of I-135 on the east side of Hydraulic Avenue (3000 S Hydraulic).

**APPLICANT/OWNER:** BANDDL1 LLC, c/o Bennie M. Lee Jr (applicant/owner)

**LEGAL DESCRIPTION:** Generally described as vacating the east 16 feet of the platted 60-foot front yard setback located on and running parallel to the west property line of Lot 1, Block A, Western Lithograph 2nd Addition, and Hydraulic Avenue, Wichita, Sedgwick County, Kansas

**LOCATION:** Located north of I-135 on the southeast corner of Industrial Avenue and Hydraulic Avenue (WCC III)

**REASON FOR REQUEST:** Remove an existing encroachment

**CURRENT ZONING:**

The site and the abutting south and east properties and the adjacent (across Industrial Avenue) north properties is zoned LI Limited Industrial. Adjacent (across Hydraulic Avenue) west properties are zoned MF-29 Multi-Family Residential.

The applicant is requested the vacation of the east 16 feet of the platted 60-foot front yard located on and running parallel to the west property line of the LI Limited Industrial zoned Lot 1, Block A, Western Lithograph 2nd Addition and Hydraulic Avenue. The site is a corner lot with the short side of the lot being along its Hydraulic Avenue frontage. Per the Unified Zoning Code (UZC) the short side of a corner lot is the front side of the lot. Per the UZC the LI zoning district has a 20-foot minimum front yard setback. The applicant's requests reduces the platted 60-foot setback to 44 feet. A 10-foot wide platted easement runs through the south 10 feet of the subject setback; the easement that will remain in effect. Water, sewer and stormwater are located in the Hydraulic and Industrial Avenues right of way. Westar has equipment and transmission lines running parallel to the west side of the subject property in Hydraulic Avenue. Conditions 2 and 3 cover Westar Energy. LaDonna Vanderford is the area representative for that area and can be reached at 261-6490. The Western Lithograph 2nd Addition was recorded April 12, 1985.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Public Works, Water & Sewer, Stormwater, Traffic, Fire, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of the platted front yard setback.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time June 16, 2016, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by vacating the described portion of the platted front yard setback and that the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Provide a legal description of the vacated portion of the platted front yard setback on a Word document via E-mail for the Vacation Order. This must be provided to Planning prior to VAC2016-00019 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.

- (2) As needed provide easements for public and franchised utilities. As needed provide letters from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00019 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide all required approved projects to Planning prior to VAC2016-00019 proceeding to the City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicants' expense.
- (5) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

#### **SUBDIVISION COMMITTEE'S RECOMMENDED ACTION**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Provide a legal description of the vacated portion of the platted front yard setback on a Word document via E-mail for the Vacation Order. This must be provided to Planning prior to VAC2016-00019 proceeds to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (2) As needed provide easements for public and franchised utilities. As needed provide letters from franchised utility representatives stating that their utilities are protected by the appropriate easements. Easements for public utilities, with original signatures, must be provided to Planning prior to VAC2016-00019 proceeds to the City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds.
- (3) Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide all required approved projects to Planning prior to VAC2016-00019 proceeds to the City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicants' expense.
- (5) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**RAMSEY** moved, **DAILEY** seconded the motion, and it carried (12-0).

- **3-2. VAC2016-00020: County request to vacate a portion of a platted floodway reserve on property**, generally located west of 183rd Street West on the south side of 29th Street North.

**APPLICANT/AGENT:** Marshall & Donna Walker (applicant/owner) Baughman Company, P.A., c/o Phil Meyer (agent)

**LEGAL DESCRIPTION:** Generally described as vacating a portion of the platted drainage easement located in the northwest corner of Lot 3, Block A, Walker Estates Addition, Sedgwick County, Kansas.

**LOCATION:** Generally located west of 183rd Street West on the south side of 29th Street North (BoCC #3)

**REASON FOR REQUEST:** To allow a single-family residence to be built

**CURRENT ZONING:** The site and all abutting and adjacent properties are zoned RR Rural Residential.

The applicant proposes to vacate a portion of the platted drainage reserve located on the northwest side of the 11.59-acre Lot 3, Block A, Walker Estates Addition. The plat's text states the platted drainage reserve is for drainage and shall be owned and maintained by the owners of the lots they are located on, or until such time that the appropriate governing body elects to assume the responsibility for the maintaining and improvements to the drainage reserves. The plat's text also states that no buildings shall be constructed in the drainage reserves and that no fill, change of grade, creation of channel or other work shall be done within the drainage reserves without the permission of the Engineer of the appropriate governing body. The proposed vacated portion of the drainage reserve appears to be located outside of the FEMA Flood Plains.

The applicant wishes to build a single-family residence and driveway within the proposed vacated drainage reserve. There is an existing single-family residence (built 1989) on the subject lot, Lot 3, Block A, Walker Estates Addition. If the vacation request is approved the applicant will need a Lot Split to build another single-family residence on the lot.

The site is located in Sedgwick County Rural Water District #4. Sewer is an on-site that serves the existing single-family residence and it appears to be septic; a separate on site sewer system will be needed for the proposed single-family residence. There are no utilities located within the area of the vacation. The site is located within Sedgwick County Rural Electric Cooperative. The Walker Estates Addition was recorded with the Register of Deeds March 18, 2004.

NOTE: VAC2016-00014 vacated a portion of platted access control to allow a drive from the subject site to 29<sup>th</sup> Street North; MAPC April 21, 2016.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from County Public Works, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of the platted drainage reserve.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time June 16, 2016, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by vacating the described portion of the platted drainage reserve and that the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Vacate that portion platted drainage reserve, as approved by County Public Works. Provide Planning Staff with a legal description of the approved vacated portion of the platted drainage reserve on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. Provide to Planning prior to the case going to the BoCC for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.
- (3) All improvements shall be according to County Standards and at the applicant's expense, including all required County plans, permits, inspections and the construction of the drive onto 29<sup>th</sup> Street North and through the platted drainage reserve.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

## **SUBDIVISION COMMITTEE'S RECOMMENDED ACTION**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate that portion platted drainage reserve, as approved by County Public Works. Provide Planning Staff with a legal description of the approved vacated portion of the platted drainage reserve on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. Provide to Planning prior to the case going to the BoCC for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.
- (3) All improvements shall be according to County Standards and at the applicant's expense, including all required County plans, permits, inspections and the construction of the drive onto 29<sup>th</sup> Street North and through the platted drainage reserve.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**RAMSEY** moved, **DAILEY** seconded the motion, and it carried (12-0).

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**3-3. VAC2016-00021: City request to vacate a portion of platted Diane public street right of way**, generally located east of Seneca Street and north of 31st Street South.

**APPLICANT/AGENT:** Southwest Baptist Church & Via Fone Inc. (applicants) J P Weigand & Sons, c/o Grant Tidemann & Baughman Company, c/o Phil Meyer (agents)

**LEGAL DESCRIPTION:** Generally described as vacating a 30-foot wide (x) 332.15-foot long portion of Diane Street dedicated on the Leonard A. Garnett Addition and the Southwest Baptist Church Addition, Wichita, Sedgwick County, Kansas

**LOCATION:** Generally located east of Seneca Street and north of 31st Street South (WCC III)

**REASON FOR REQUEST:** Street has never been improved and has remained 30 feet wide

**CURRENT ZONING:** Abutting west adjacent properties are zoned SF-5 Single-Family Residential. Abutting north properties are zoned SF-5 and abutting south properties are zoned LC Limited Commercial and SF-5. Abutting west side is 30-foot wide Diane Street and 20-foot wide alley intersection



The applicants are requesting the vacation of the unimproved 30-foot wide (x) 332.15-foot long portion of Diane Street dedicated on the Leonard A. Garnett Addition and the Southwest Baptist Church Addition; the applicants own the Leonard A. Garnett Addition and the Southwest Baptist Church Addition.

The unimproved half-street right of way looks like a yard. The half-street right of way dead ends against multiple unplatted SF-5 Single-Family Residential zoned properties on its east side, leaving it approximately 525 feet short of intersecting with the nearest street to the east, Osage Street. There are at least four single-family residences (built 1950, 1951 and 1953) located on those tracts. The abutting north SF-5 zoned properties were platted as part of the Robson Heights Addition, recorded July 25, 1950. This portion of Diane Street was platted in the Leonard A. Garnett Addition, recorded with the Register of Deeds January 21, 1986, and the Southwest Baptist Church Addition, recorded February 29, 1968. Both of the applicants' properties, which dedicated the described portion of Diane Street, were platted 18-36 years after the north and east abutting properties were either platted or developed as single-family residences.

There has been no opportunity for this portion of Diane Street to acquire an additional 30 feet of right of way from the abutting north properties or to extend further east to Osage Avenue through the abutting east properties. The proposed vacation will not create a dead end, as the west remaining paved 30-foot wide portion of Diane Street intersects with Seneca Street on its west side and with a paved 20-foot wide alley on its east side, which in turn intersects with 31<sup>st</sup> Street South. No properties will be denied access to public right of way and circulation in the area will remain as it is now. There are no garages or accessory buildings located on the abutting north properties that use the unimproved half-street right of way for access. No public water, sewer, stormwater, nor hydrants are located in the subject right of way. Westar has line and equipment in that area that serves private security lighting to one of the applicants, Southwest Baptist Church. Conditions 3 and 4 cover Westar Energy. Ennidh Garcia is the area representative for that area and can be reached at 261-6859

The property owner, Jon Prange, of Lot 6, Robson Heights Addition was present at the June 23, 2016, Subdivision meeting. Lot 6 abuts the northeast 70 feet (of the east approximately 80 feet) of that portion of Diane Street that was dedicated by the Leonard A. Garnett Addition. Mr. Prange stated that he had bought Lot 6 late last year and that the property had an existing gate located in the southwest corner of the rear yard that opened onto the unimproved Diane Street. Mr. Prange stated that he wanted to contact the applicant(s) to inquire if he could retain access onto Diane Street. Lot 6 has access to 30<sup>th</sup> Street South, the unimproved 30-foot wide Diane Street is basically secondary access that requires mowing and other maintenance by the applicants. There is no garage or other structure located in the rear yard of Lot 6 or the other lots in the Robson Heights Addition that requires access off of the unimproved Diane Street. Staff discourages using the subject portion of Diane Street right of way for secondary access when there is no structures in the Robson Heights Addition requiring Diane Street to be used as secondary access.

The Subdivision Committee instructed the applicants to meet with Mr. Prange to discuss possible access from a portion of the proposed vacated portion of Diane Street to Mr. Prange's property, Lot 6, Robson Heights Addition.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Public Works, Water & Sewer, Stormwater, Traffic, Fire, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of public street right of way.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time June 16, 2016, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by vacating the described portion of platted public street right of way and that the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Vacate the described portion of the Diane Street public street right of way. Provide Planning with a legal description of the vacated right of way on a Word document, via E-mail to be used on the Vacation Order. This must be provided to Planning prior to VAC2016-00021 proceeding to City Council for final action
- (2) Provide a covenant, with original signatures, binding and tying the described vacated public street right of way to the applicant's abutting property. This must be provided to Planning prior to VAC2016-00021 proceeding to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds and the Sedgwick County Appraisers Office.
- (3) If needed dedicate the described vacated portion of Diane Street as easement(s) by separate instrument to cover all utilities. The original dedication must be provided to Planning prior to VAC2016-00021 proceeds to City Council for final action and subsequent recording with the Register of Deeds.
- (4) If needed provide utilities with any needed project plans for the relocation of utilities for review and approval. Any relocation/reconstruction of utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide an approved project number(s) to Planning prior to the case going to City Council for final action.
- (5) All improvements shall be according to City Standards and at the applicants' expense.

- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

#### **SUBDIVISION COMMITTEE'S RECOMMENDED ACTION**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) The Subdivision Committee instructed the applicants to meet with Mr. Prange to discuss possible access from a portion of the proposed vacated portion of Diane Street to Mr. Prange's property, Lot 6, Robson Heights Addition.
- (2) Vacate the described portion of the Diane Street public street right of way. Provide Planning with a legal description of the vacated right of way on a Word document, via E-mail to be used on the Vacation Order. This must be provided to Planning prior to VAC2016-00021 proceeding to City Council for final action
- (3) Provide a covenant, with original signatures, binding and tying the described vacated public street right of way to the applicant's abutting property. This must be provided to Planning prior to VAC2016-00021 proceeding to City Council for final action and subsequent recording with the Vacation Order at the Sedgwick County Register of Deeds and the Sedgwick County Appraisers Office.
- (4) If needed dedicate the described vacated portion of Diane Street as easement(s) by separate instrument to cover all utilities. The original dedication must be provided to Planning prior to VAC2016-00021 proceeds to City Council for final action and subsequent recording with the Register of Deeds.
- (5) If needed provide utilities with any needed project plans for the relocation of utilities for review and approval. Any relocation/reconstruction of utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide an approved project number(s) to Planning prior to the case going to City Council for final action.
- (6) All improvements shall be according to City Standards and at the applicants' expense.
- (7) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**LONGNECKER** commented that staff encouraged the neighbor to the north to get with the owners and applicant's agent to resolve his concerns. He said he understood that has happened by e-mails he has received from both the agent and property owner. He added that he has received phone calls on this case and that there seemed to be some confusion regarding the request to vacate and that property owners abutting the area to the north thought they would be asked to give up part of their backyards. He said that is not the case. He said this vacation is simply a portion of a road that hasn't gone anywhere for 18-36 years and has been maintained as a yard.

**PHIL MEYER, BAUGHMAN COMPANY, AGENT FOR APPLICANT** said he had no additional comments and confirmed that the owner of the residence to the north e-mailed their office and they have reached an agreement.

**JERRY OSBORN, 925 WEST 30<sup>TH</sup> STREET** said his property was located right behind the church. He mentioned that a business was trying to develop in the area to the north and buy two lots. He said he wants more information on that because he is concerned about someone bringing in a business 75 foot off his property because he feels that will drive down his property value. He said he has been told that a business wants to build in this area. He said he wants to know what the plan is and not just that the applicant wants to vacate the easement. He said something else is driving this request besides vacating the street. He made several comments regarding a possible business being located on property other than the parcel being vacated and the problems associated with that.

**JOSHUA BLICK, 2039 SOUTH EVERETT, PRESIDENT, SOUTHWEST NEIGHBORHOOD ASSOCIATION** commented that he thinks the church misunderstood the application that they signed to mean that the road would go in. He mentioned development of the New Fidelity Bank in the area which the Commission approved several months ago. He mentioned possible purchase contracts on several properties abutting this vacation request. He said the applicants are trying to get free property by filing this vacation petition. He also asked what is going to happen to the lots and half yards to the north of this area.

**CHAIR NEUGENT** asked legal to respond to the questions concerning the property once it is vacated.

**JEFF VANZANDT, ASSISTANT CITY ATTORNEY** said per Statutes when a property is vacated you go to the middle of the road or alley and the north half goes to the property owners to the north and the south half goes to the property owners to the south.

**LONGNECKER** clarified that the properties to the north did not participate in dedication of the right of way so there are no reversionary rights. He said the two properties to the south are the ones that participated in the dedication of the right of way. He added that if there is going to be a move to extend LC zoning to the north in order for a business to be established in the area, those properties zoned SF-5 will need to be rezoned. He said staff has not received an application for such a request.

**MEYER** referred to the three lots owned by Fidelity Bank which they had rezoned to LC in order to build a new branch. He said the vacation application in front of the Commission to be considered today is totally separate from anything Baughman did for Fidelity Bank. He said when they were contacted regarding vacation of Diane Street, they informed the applicant that the odds of that happening were not

in their favor unless the church agreed and participated. He said he is unaware that the applicant is trying to buy ground to the north of the vacation request. He said anything regarding the properties to the north of the vacation request would require an additional zone change. He reiterated that what was being discussed today was vacation of Diane Street.

There was considerable discussion regarding property surrounding the vacation request, property owned by Fidelity Bank and potential future development of properties in the area.

**ELLISON** commented that he found it odd that the HOA has totally different information from what everyone else is saying. He asked if anyone has discussed the request with the neighborhood.

**MEYER** commented that they did not hold a neighborhood meeting for vacation of Diane Street. He said this is an unused street right of way that has sat there for years. He said he has no knowledge of any other development, and added he is not saying the neighbors are right or wrong but he has no idea of that information.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**ELLISON** moved, **TODD** seconded the motion, and it carried (12-0).

**RAMSEY** commented that the Commission was reviewing a vacation case. He said any speculation about what might happen to land in the future would be a separate zoning case. He said he sees no reason not to approve the vacation request.

**DENNIS** (Out @2:35 p.m.)

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**PUBLIC HEARINGS**

4. **Case No.: ZON2016-00023** - Wayne and Donna Wulf (owers/applicants) request a County zone change from RR Rural Residential to SF-20 Single-family Residential on property described as:

The south half of the east half of the Southwest Quarter of Section 35, Township 28 South, Range 2 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas.

**BACKGROUND:** The applicant requests a zone change from RR Rural Residential (RR) to SF-20 Single-family Residential (SF-20) on 40 acres. The application area is concurrently platting as the Tiffani Breeze addition with 18 lots and a reserve ranging in size from 2.9 acres to 1.5 acres on modified septic systems. RR zoning requires a 2-acre minimum lot size. The site is located on the north side of East 71<sup>st</sup> Street South and is ¼ mile east of South 127<sup>th</sup> Street East. The site is not within a small city urban growth area but is within Rural Water District #3.

All property surrounding the site is zoned RR. Property due north, south and east of the site is undeveloped and used for agriculture. Further east is the Downwind Estates airfield and associated residential subdivision. West of the site are RR zoned residential lots approximately 10 acres in size. Further west and northwest are residential lots as small as 0.63 acres in the RR zoned Fairway Meadows Addition with a community sewer system.

**CASE HISTORY:** The site is in the platting process, MAPC will hear the plat on July 7, 2016.

**ADJACENT ZONING AND LAND USE:**

NORTH:	RR	Agriculture, large-lot single-family residential development
SOUTH:	RR	Agriculture
EAST:	RR	Agriculture, large-lot single-family residential development, private airfield
WEST:	RR	Large-lot single-family residential development

**PUBLIC SERVICES:** East 71<sup>st</sup> Street South is an unpaved, two-lane section-line road maintained by the township. The proposed plat will give this section of 71<sup>st</sup> Street South a 30-foot half-width right of way and a 30-foot water line easement. By keeping the lot count below 20, the applicant is not required to make paving improvements to 71<sup>st</sup> Street South. The site will be provided water by Rural Water District #3, on-site sewer (modified septic systems) are proposed based on lot sizes below two acres.

**CONFORMANCE TO PLANS/POLICIES:** The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as “rural” and not within any small city growth areas. The “rural” category encompasses land outside the 2035 urban growth areas for Wichita and the small cities. Agricultural uses, rural-based businesses, and larger lot residential exurban subdivisions likely will be developed in this area. Such development should occur in accordance with the *Urban Fringe Development Standards for Wichita and Sedgwick County*.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**.

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** All property surrounding the site is zoned RR. Property due north, south and east of the site is undeveloped and used for agriculture. Further east is the Downwind Estates airfield and associated residential subdivision. West of the site are RR zoned residential lots approximately 10 acres in size. Further west and northwest are residential lots as small as 0.63 acres in the RR zoned Fairway Meadows Addition with a community sewer system.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is currently zoned RR and could be developed with 2-acre minimum residential lots.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** The requested SF-20 zoning will allow half-acre lots. The increased number of potential lots will impact nearby property with increased traffic.

- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as “rural” and not within any small city growth areas. The “rural” category encompasses land outside the 2035 urban growth areas for Wichita and the small cities. Agricultural uses, rural-based businesses, and larger lot residential exurban subdivisions likely will be developed in this area. Such development should occur in accordance with the *Urban Fringe Development Standards for Wichita and Sedgwick County*.
- (5) **Impact of the proposed development on community facilities:** 71<sup>st</sup> Street South is unpaved at this location. MAPC will hear the plat for this development concurrently with the zone change. The increase in residential density will slightly increase demand on community facilities, infrastructure and services.

**JESS MCNEELY**, Planning Staff presented the Staff Report.

**GOOLSBY** asked about the possibility of the Commission requiring an overlay or a No Protest Petition.

**JUSTIN WAGGONER, ASSISTANT COUNTY COUNSELOR** clarified that Commissioner Goolsby was talking about adding a condition to the plat that the applicant would not protest if there was a road paving petition. He said the Planning Commission could probably do that; however, being a lawyer he wanted to be cautious and look into it more.

**CHAD ABBOTT, ABBOTT LAND SURVEYING, AGENT FOR THE APPLICANT** said the plat for Downwind Estates, 2<sup>nd</sup> Addition is approved but not shown on the zoning map. He said that parcel will be approved and recorded once construction of 139<sup>th</sup> Street east and 73<sup>rd</sup> Street south is completed. He said the reason he mentions it is the zone change to SF-20 on that parcel was approved. He asked for clarification that one of the requirements for the requested zone change approval was requiring a No Protest Petition for future paving from his client.

**CHAIR NEUGENT** commented that the decision hasn’t been made but it has been brought up.

**ABBOTT** commented that he has had zero opportunity to speak to his client about that issue since this is the first time it has been brought up so he is unprepared to comment on that suggestion.

**GOOLSBY** asked if the agent would like the Planning Commission to defer the item.

**ABBOTT** said they do not want a deferral. He said he would stand for questions.

**CHAIR NEUGENT** asked if the applicant would agree to an overlay or No Protest Petition if that ends up being part of the Commission’s recommendation.

**ABBOTT** said probably, but added that without having an opportunity to discuss it with his client, he can’t say for sure. He said if they don’t agree with that contingency, the zoning request would die.

**KNEBEL** mentioned that the proposed zoning change does go to the Board of County Commission for final determination.

**RICHARDSON** asked Mr. Weber to respond to the idea of requiring an overlay or No Protest Petition and if that has been done in the past in the County. He said he was concerned that the Commission was setting another precedent without fully discussing it.

**JIM WEBER, DEPUTY DIRECTOR, COUNTY PUBLIC WORKS** said he cannot think of a time where there has been a No Protest Petition in the County. He said he agrees with County Counsel that the idea would require some research to determine if that was even a possibility. He said many City and County statutes don't match up. He mentioned for the record that staff did not come to this meeting asking the Planning Commission to do that. He said if that is a solution the Commission would like to pursue, Legal Counsel and other County staff could research that possibility. He said he is no expert but he is thinking that the No Protest Petition is more related to Subdivision Regulations and issues than zoning.

**RICHARDSON** said this goes back to the previous discussion on the platting item as to whether this is fair. He said he would come down on the side of deferring the request until it is determined if this makes any sense.

**DOOL** said he was wondering if staff could shed any light on the reasoning behind why the statute was written this way.

**WEBER** reiterated that historically there has been a problem with urban scale development just outside areas where you can receive municipal services with the idea being that they can avoid special assessments for sewer, water, paving, etc. He commented that there are 5-10 acre lots surrounding this parcel which is more typical with on-site sewer and water, which is what this subdivision will do. He said in reviewing the county road system it was determined that an arterial road would have to be paved after there were about 200 vehicles on it per day. He said data has revealed that when traffic gets to 200 vehicles, you need to think about paving so over the years that is where the line has drawn itself. He said the average is 10 trips per day, per household. He said this is an underfunded Township road and when you put that much traffic on it then it becomes a problem that comes to the County. He said that means someone has to pave the road. He said the goal was try to limit themselves and establish triggers when the issue needs to be resolved. He said since the financial downturns, not much has been going on in the way of development so paving hasn't been an issue.

**TODD** asked for information about the vacation of 71st Street. He also asked if the Commission approves the No Protest Petition, is that something the Board of County Commissioners can reverse.

**WEBER** briefly reviewed vacation of 71<sup>st</sup> Street, which he said will occur when the plat is filed, the proposed by-pass route, Downwind Estates and Cook Airfield.

**WAGGONER** suggested if the Commission wanted to include the No Protest Petition it would need to be included in the zone change and the plat. He said the zone change will go before the County Commission for final determination.



**ELLISON** said he agreed that the Commission needs to include a stipulation about a No Protest Petition.

**GOOLSBY** asked staff how the No Protest Petition is handled by the City.

**KNEBEL** commented that when a No Protest Petition has been done in the past (adding that typically this is done on commercial property) language is added that a No Protest Petition is required for the paving of and then add the name of the street.

**MOTION:** To approve subject to staff recommendation and the requirement of a No Protest Petition for the paving of 71<sup>st</sup> Street South.

**ELLISON** moved, **GOOLSBY** seconded the motion.

**FOSTER** asked legal how the Commission ties this back to the Subdivision motion.

**WAGGONER** said he misspoke and said since the plat is already approved this would be a separate document related to the zone change.

**RICHARDSON** asked for clarification on what gets to be protested. He asked is it a lot, is it so many square feet from the arterial or what? He said there are a lot of uncertainties here and who is going to agree to a petition when they don't know what it is.

**WAGGONER** said he believed they would refer to the County's Charter Resolution to determine the type of petition and then geographically define the boundaries of the location.

**WEBER** said he does not know the answer to that one. He said the agent asked the question how close does a property need to be to be dragged into the petition.

**RICHARDSON** said the City has a specific formula on paving petitions about so many hundred feet from the arterial. He asked as far as the County is concerned, who gets dragged into paving and how much do they have to pay for it.

**WEBER** said he was going to suggest that the Planning Commission not require a No Protest Petition. He said staff just doesn't know enough about that process and added that the developer has done everything that they are supposed to do. He said this issue is complex and if the Commission tries to deal with it today, staff will probably need to come back to the Commission again for further discussion in addition to discussing the issue with the County Commission when they review the zoning request. He said this is an important issue and he does not know if this is the best way to handle this.

**RAMSEY** said he completely and wholeheartedly agrees with Mr. Weber. He said the Planning Commission is trying to solve a problem that is not there yet.

**SUBSTITUTE MOTION:** To approve subject to staff recommendation.

**RAMSEY** moved, **TODD** seconded the motion, and it carried (10-1). **ELLISON** – No.

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5. **Case No.: ZON2016-00024** - TN Investments & Catholic Diocese of Wichita (applicants); and Ruggles & Bohm (agent) request a City zone change from TF-3 Two-family Residential to LC Limited Commercial on property described as:

The North 28.00 feet of the West 61.66 feet of Lot 5, all in Block A, in Pineridge Addition to Wichita, Sedgwick County, Kansas, AND The West 24 feet 4 inches of the South 106 feet 3 inches of Lot 1, Replat of Part of Pineridge Addition to the City of Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicant is seeking Limited Commercial (LC) zoning on approximately 0.10 acre of a 0.74 acre parcel located at the northeast corner of East Harry and South Hillside. The subject site is the northeast portion (0.04 acre) of the platted lot and the west 0.06 acre of the Replat of Pineridge Addition. If approved, the LC zoning would permit the entire parcel to be redeveloped as a fast food restaurant. TN Investments is in negotiation to purchase the 0.06 acre from the Catholic Diocese of Wichita.

The properties located east and south of the site are zoned LC and developed with fast food restaurants with drive-thru services. Land north of the site is zoned B Multi-family and TF-3 Two Family Residential developed with single family residential. Land to the east of the site is zoned TF-3 and is All Saints Parish.

**CASE HISTORY:** This zone change application has been filed to change current zoning (TF-3) to LC. The subject site was previously occupied by a convenience store/gas station. The land will be scraped and a new restaurant with a drive-thru window will be built.

**ADJACENT ZONING AND LAND USE:**

North: B; multi-family residential & TF-3; single-family residential  
South: LC; Fast Food Restaurant with Drive-Thru  
East: TF-3; religious institutional use  
West: LC; auto title loan business

**PUBLIC SERVICES:** The site is served by all usual municipal and private utilities and services. Traffic engineering requires a five foot right of way dedication along the Harry Street frontage for future street expansion.

**CONFORMANCE TO PLANS/POLICIES:** The 2035 Wichita Functional Land Use Guide depicts the site as appropriate for “local commercial” use. The “local commercial” use category contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities.

**RECOMMENDATION:** Based upon the information available at the time the staff report was completed, staff recommends approval of the request upon dedication of street right of way along the Harry Street frontage for future street expansion.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The land located east and south of the site is zoned LC and developed with fast food restaurants with drive-thru services. Land north of the site is zoned B Multi-family developed with a five-plex unit and undeveloped TF-3 Two Family Residential. Land to the east of the site is zoned TF-3 and is occupied by All Saints Parish facilities.
2. The suitability of the subject property for the uses to which it has been restricted: The site is located at a major arterial intersection with LC development on the northwest, southwest and southeast corners. North of the subject site is B zoned property developed with a multi-family unit, which is separated from the subject site by a solid screening fence. East of the subject site is the All Saints Parish campus on TF-3 zoned property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the LC zoning should not create an increased negative impact on nearby property given the site location on the intersection of two arterial streets and the previous use of the site as a convenience store.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: LC zoning is appropriate for this location and provides economic viability to redevelop the property. Residential zoned property will be screened according to the Unified Zoning Code requirements.
5. Length of time the property has been vacant as currently zoned: The convenience store site has been vacant since 2010.
6. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2035 Wichita Functional Land Use Guide depicts the site as appropriate for “local commercial” use. The “local commercial” use category contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. The site is intended to be developed as a fast food restaurant.
7. Impact of the proposed development on community facilities: Right of way is being required by traffic engineering for future street expansion.

**SCOTT KNEBEL**, Planning Staff presented the Staff Report. He explained that the staff recommendation was based on dedication of street right of way. He said the applicant asked Engineering staff who agreed that the dedication could be contingent on a street project. In addition, he reported that the DAB requested that the screening fence on the north be eight feet tall.

**DENNIS** clarified that if the Commission approves the application it will be with those two changes.

**KNEBEL** answered yes.

**MOTION:** To approve subject to staff recommendation with the changes listed above.

**RICHARDSON** moved, **DAILEY** seconded the motion, and it carried (12-0).

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6. **Case No.: ZON2016-00026** - Meritrust Credit Union Attn: Randy Doerksen (owner/applicant) and Baughman Co., P.A., Attn: Phil Meyer (agent) request an amendment to City PO Protective Overlay 11 to allow retail sales on LC Limited Commercial zoned property on property described as:

Lot 2 except the east 152.22 feet, Riverside Health System Addition to Wichita, Sedgwick County, Kansas.

**CHAIR NEUGENT** announced that the item had been deferred.

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7. **Case No.: CON2016-00022** - Homer Morgan (applicant), Stephen M. Joseph (agent) request a City Conditional Use for a Nightclub in the City in LC Limited Commercial zoning (the Cactus) within 300 feet of residential zoning as property described as:

Part of lot 1 beginning at the Northwest corner, thence East 140 feet, thence South 140 feet, thence West 140 feet, thence North to the point of beginning, Blk A, Industrial Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The application area, 2802 South Hydraulic Avenue, is located at the southeast corner of Hydraulic Avenue and East Wassall Street in LC Limited Commercial (LC) zoning and within 300 feet of residential zoning. The site is developed with a one-story building and 35 off-street parking spaces. The County Tax Assessor lists “restaurant” as the current land use; the site currently has a drinking establishment-restaurant license allowing the sale of alcohol provided that food is the majority of the gross sales. A drinking establishment and/or restaurant has functioned on the site for many years. The applicant wishes to obtain an entertainment license and therefore requests this conditional use for a “nightclub in the city.” Nightclub in the city is defined by the Unified Zoning Code (UZC) as an establishment that provides entertainment and/or dancing, where alcoholic beverages are served and where food may or may not be served. The UZC permits a nightclub in the city in the LC zoning district by right, but requires a conditional use if the property is located within 300 feet of a church, park, school or residential zoning district. The application area is approximately 120 feet west of multi-family residential zoning and development along Wassall Street, 160 feet from single-family residential zoning and development on South Rose Marie Court, 230 feet from single-family residential zoning and development on South Hydraulic and 230 feet from two-family residential zoning with single-family residential development on South Greenwood Avenue.

Property north of the site is zoned LC and developed with retail, warehousing and another drinking establishment. Property south of the site is zoned LC and developed with a retail strip center and vehicle repair. Property east of the site is zoned LC and developed with a warehouse/office. Property further east is zoned MF-29 Multi-family Residential (MF-29) and developed with three-plex apartments. Property west of the site is zoned LC and developed with a convenience store and a vehicle sales lot. Property further west is zoned TF-3 Two-family Residential (TF-3) and SF-5 Single-family Residential (SF-5) and developed with single-family residences.

**CASE HISTORY:** The site was platted as a portion of Lot 1, Block A of the Industrial Addition to Wichita in 1951. The building on the site was constructed in 1955.

**ADJACENT ZONING AND LAND USE:**

North: LC, SF-5	Retail, warehousing, drinking establishment, single-family residential
South: LC	Retail, vehicle repair
East: LC, MF-29	Warehouse/office, multi-family residences
West: LC, TF-3, SF-5	Convenience store, retail, vehicle sales, warehousing and vehicle repair

**PUBLIC SERVICES:** South Hydraulic Avenue is a paved arterial street with four lanes and a signalized intersection at this location. Wassall is a paved two-lane local street at this location. Sidewalks exist along both Hydraulic and Wassall at this location. All other urban utilities and services are available.

**CONFORMANCE TO PLANS/POLICIES:** The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the mature neighborhoods within an approximate three-mile radius of the downtown core. The Plan's 2035 *Wichita Future Growth Concept Map* identifies this location as "commercial" and adjacent to areas identified as "new employment." The UZC requires one parking space per two seats for nightclubs. The applicant indicates that the site has an occupancy of 118 people. The applicant's site plan demonstrates 35 parking spaces, 24 fewer than required. The applicant will require either a shared parking agreement or a combination of parking reduction through an adjustment or variance with a shared parking agreement to meet the UZC parking requirement.

**RECOMMENDATION:** Staff notes that some form of drinking establishment has existed on this site for some time which does not appear to be incompatible with nearby residential uses. This application does not introduce a new use to the area. Staff notes that the site is buffered from nearby residential properties by other commercial uses. Based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a Nightclub in the City be **APPROVED**, with the following conditions:

- (1) The applicant shall obtain a parking reduction through a zoning administrative adjustment or variance and/or a shared parking agreement to conform to the UZC parking requirements.
- (2) The applicant shall submit a revised site plan, to be approved by planning staff, which identifies required parking.
- (3) The site shall be developed and maintained in conformance with the approved site plan.

- (4) No outside loudspeakers or outdoor entertainment is permitted.
- (5) The site shall maintain all necessary licenses for a nightclub in the city.
- (6) The site shall conform to all applicable codes and regulations to include but not limited to zoning, building, fire and health.
- (7) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property north of the site is zoned LC and developed with retail, warehousing and another drinking establishment. Property south of the site is zoned LC and developed with a retail strip center and vehicle repair. Property east of the site is zoned LC and developed with a warehouse/office. Property further east is zoned MF-29 and developed with three-plex apartments. Property west of the site is zoned LC and developed with a convenience store and a vehicle sales lot. Property further west is zoned TF-3 and SF-5 and developed with single-family residences.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC and developed with a restaurant licensed to serve alcohol. The site could be used as zoned for commercial uses other than a nightclub.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is zoned LC and could be developed with any range of permitted uses in that district. The proximity of residential zoning triggers the conditional use review for a nightclub. Noise and activity from the nightclub could impact nearby residences; proposed conditions prohibiting outdoor speakers and entertainment should mitigate this impact. The request does not introduce a new use in the neighborhood. The limited size of the site and building will prevent expansion beyond a neighborhood scale, and proposed conditions should mitigate impacts on surrounding properties.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial of the request would presumably be an economic hardship upon the property owner, as the applicant owns the property and desires to operate the proposed business within LC zoning.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the mature neighborhoods within an approximate three-mile radius of the downtown core. The Plan's 2035 *Wichita Future Growth Concept Map* identifies this location as "commercial" and adjacent to areas identified as "new employment." The UZC requires one parking space per two seats for

nightclubs. The applicant indicates that the site has an occupancy of 118 people. The applicant's site plan demonstrates 35 parking spaces, 24 fewer than required. The applicant will require either a shared parking agreement or a combination of parking reduction through an adjustment or variance with a shared parking agreement to meet the UZC parking requirement.

6. Impact of the proposed development on community facilities: The proposed Conditional Use should not impact community facilities to any greater extent than other uses permitted in the LC zoning district.

**JESS MCNEELY**, Planning Staff presented the Staff Report. He reported that DAB III recommended denial of the request 6-0 and referenced the DAB memorandum provided to the Commission as a handout. He said there was discussion regarding the fact that the site does not meet the parking requirements and that there is already this type of use in the area.

**RICHARDSON** asked staff to explain obtaining a parking requirement reduction through the use of an administrative adjustment.

**MCNEELY** explained that there is a process outlined in the UZC for administrative adjustments of up to a 25% reduction of the parking requirement. He said they are quite common and approved by staff. He said anything beyond 25% would have to be a variance request to the Board of Zoning Appeals.

**RICHARDSON** clarified that 25% would be 15 spaces less than what is required.

**MCNEELY** said that was correct and added that the applicant would also have to demonstrate where those spaces would be coming from which the most logical way was a shared parking agreement with one of the other commercial properties in the area.

**STEPHEN M. JOSEPH, 500 NORTH MARKET, AGENT FOR THE APPLICANT, HOMER MORGAN** who he said owns a number of commercial buildings and shopping centers in Wichita. He said the purpose of the application is twofold. He referenced another building on south Broadway that had been a drinking establishment for many, many years; however, because it had been vacant for almost two years, they lost the "grandfather provision" of being considered a legal non-conforming use and became an illegal non-conforming use. He said because that conditional use permit was denied, the client wanted to evaluate all of his locations to see if this problem could come up in the future somewhere else. He said they also wanted to examine what they felt was a conflict between zoning and City Ordinances in terms of definition, which he said he would address later in the presentation.

**JOSEPH** said the space is currently occupied by the Cactus Cantina which is a restaurant that has a State Drinking Establishment License to serve alcohol. He said because this restaurant may not be there in the future, his client would like the ability to offer it as a nightclub in the City with some form of entertainment. He said the definition under Entertainment Licenses includes everything including a juke box. He said his client wants another use available if the Cactus Cantina closes as a drinking establishment. He said the particular conflict between the City Ordinance and zoning that they have had to deal with in the past is that zoning defines tavern/drinking establishment as any facility that serves

more than 50% on average food in a six month period. He said if the Cactus Cantina falls below 50% of their revenue from food sales, they will have to close because it then becomes an illegal use. However, he said the City Ordinance which licenses drinking establishments provides for a drinking establishment/restaurant that only has to have 30% food sales. He said you can be a perfectly legal drinking establishment/restaurant under the City Ordinance with 30% food sales but you can't open because you violate the zoning if you have less than 50% revenue from food sales. He said by obtaining the conditional use permit now, it will avoid problems if this issue should come up in the future about being properly licensed but not properly zoned.

**RICHARDSON** asked if a facility can be a nightclub without serving food if the conditional use is granted.

**JOSEPH** responded yes because a nightclub is a drinking establishment with an entertainment license also.

**DIRECTOR MILLER** clarified that a nightclub in the City by definition in the UZC "...provides entertainment which may include provision of dancing by patrons or employees and where cereal malt beverage and alcohol liquor are offered, consumed or served to the public ..... and which may or may not serve food." He said the service of food does not impact the definition of a nightclub.

**RICHARDSON** clarified so the reason for the nightclub application is so the establishment can fall under 50% food sales.

**JOSEPH** said the request was twofold because the applicant would like the ability to offer the property as a nightclub for some future tenant and to eliminate the conflict between the zoning and City Ordinance.

**DAILEY** asked about parking at the location now.

**JOSEPH** said he doesn't think they meet the parking requirement for a restaurant right now, which is one space per three patrons. He said they anticipate being able to get shared parking agreements to obtain the necessary parking required for a nightclub which was one space per two patrons. He added if they didn't know they could get those agreements, they would not have applied for the conditional use.

**MILLER STEVENS** mentioned shared parking and said you can only share so much.

**MCNEELY** said the entire strip center has a number of uses including other retail and restaurant. He added that the UZC has parameters on distance requirements for shared parking. He said there is a standardized shared parking agreement where both parties demonstrate how they meet the UZC.

**MILLER STEVENS** said she still thinks it's questionable.

**RICHARDSON** asked if the location has the required number of parking spaces for a restaurant now, and if they don't, how that happened.



**MCNEELY** explained that the establishment is currently short on parking spaces; however, the establishment was built in the 1940's so they are allowed to continue to operate as a legal non-conforming use.

**ELLISON** asked about other nightclubs in the area.

**GOOLSBY** said if the intent of this request is to solve a future potential problem, he can't support that.

**MOTION:** To deny.

**GOOLSBY** moved, **RAMSEY** seconded the motion.

**SUBSTITUTE MOTION:** To approve subject to staff recommendation and meeting of parking requirements.

**TODD** moved, **FOSTER** seconded the motion.

**FOSTER** asked if staff felt the applicant was going to be able to meet the parking requirement.

**MCNEELY** said staff thinks they can because there is plenty of opportunity within a 600 foot radius to meet the requirement with an administrative adjustment. He added that the reason the UZC allows for the adjustment when you are redeveloping is because much of the City was developed prior to the current UZC and there has to be some method of relief to continue to use property. He said the parking requirement is also more suburban and auto based. He said with the multi and single-family development in the neighborhood there is a good probability that patrons will be walking there.

**RICHARDSON** asked about hours of operation between nightclubs and restaurants.

**MCNEELY** said staff hasn't proposed anything different from what the standard liquor license hours of operation are.

**KNEBEL** mentioned that a nightclub is required to close by 2:00 and a restaurant can be open 24/7.

**GOOLSBY** said he sees that as more potential problems for the neighborhood.

**TODD** said if he were the property owner he would be concerned about the future so he feels there are some considerations that should be made.

**GOOLSBY** said if the applicant had a tenant for a nightclub he might feel differently.

**DAILEY** asked staff about meeting the parking requirements.

**MCNEELY** said the staff report indicated that the client needs to meet the parking requirements of the UZC through any combination including a variance or an administrative adjustment combined with shared parking agreements with surrounding property owners.

**DAILEY** asked if the Commission had a choice or could they just say the applicant had to meet the requirement by number.

**DIRECTOR MILLER** said he doesn't believe the Planning Commission has the authority to deny an applicant a process that is available to everyone else.

**RAMSEY** said this could be a problem for someone who potentially might want to buy the location; however, this is solving a problem that doesn't exist. He said a nightclub attracts a different type of clientele versus a restaurant. He said if this is not a request from someone specific to do a nightclub, he doesn't see why the Commission should open this up for that type of establishment so he can't support the substitute motion.

**FOSTER** said future land use is a speculative issue and this would run with the land so he withdrew his second to the substitute motion.

**MCKAY** (Out @3:25 p.m.)

**DOOL** seconded the **SUBSTITUTE MOTION**.

The **SUBSTITUTE MOTION** to approve failed (3-7). **FOSTER, RAMSEY, ELLISON, DAILEY, GOOLSBY, RICHARDSON** and **NEUGENT**- No.

**MILLER STEVENS** commented that there has been discussion about future land use and the fact that there is no tenant there for this type of establishment and that it would be up to the new tenant to request the zoning; however, she added that they have received no protests from surrounding neighbors on this request. She said the property owner has the right and has chosen to market this property; however, they want and the Planning Commission is prohibiting them from doing that. She said the Commission should be making sure the rules are being followed as far as parking, etc., and not being so objectionable about the type of business. She said there is no problem here. She said objecting to the nightclub designation she feels is a little prejudicial, which she sees as a problem.

**TODD** commented that there was a similar business within one half block of this location so he believes that sets the precedent.

**RICHARDSON** said the Ordinance clearly states that these types of businesses will not be allowed within so many feet of certain things, but the Commission is approving them on a regular basis. He said why where these types of businesses put there in the first place and that is the reason he will be voting to deny it.

**MILLER STEVENS** said the requirement for a Conditional Use Permit is put there so surrounding property owners can weigh in and give their opinion and address issues concerning the application. She reiterated that she felt it was a statement of prejudice for the Commission to say they don't want this type of business there. She said this type of business is allowed at this location and that is why there is the provision for a Conditional Use Permit.

The **ORIGINAL MOTION** to deny, carried (7-3). **MILLER STEVENS, TODD** and **DOOL** – No.

**GOOLSBY and RAMSEY (Out @3:35 p.m.)**

8. **Case No.: CON2016-00025** - Ast Investments c/o Kelly Ast (applicant/owner) and Stephen M. Joseph (agent) request a City Conditional Use for a Nightclub on LC Limited Commercial zoned Property on property described as:

Lots 28, 29 and 30 together with the half vacated alleys adjacent on the North and East, Block B, Bomhoff Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The LC Limited Commercial zoned site is located east of South Southeast Boulevard/Kansas Highway K-15 on the north side of East Pawnee Avenue. Currently the west portion of a 3,960-square foot one-story commercial strip building (built 1955) advertises itself as Whisky Jacks. When a LC zoned tavern, drinking establishment or nightclub is located within 300 feet of a church or place of worship, public park, public or parochial school or residential zoning district, approval of a Conditional Use is required; Unified Zoning Code (UZC), Sec.III-D6.w. TF-3 Two-Family Residential and SF-5 Single-Family Residential (SF-5) zoned properties abut the north side of the site. There is no history of a Use Exception or Conditional Use for a tavern, drinking establishment or nightclub on this site. However the applicant has stated that the site has been either a tavern, drinking establishment or nightclub most of its time (from 1955 to the present), with the longest tenured being called the Golden Knight. The site currently does not have a liquor or entertainment license and is vacant. The applicant is applying for a Conditional Use for a nightclub to get the site in conformance with the UZC and to obtain a liquor and entertainment license.

The applicant's site plan is an aerial. The aerial does not show marked parking spaces, but a trip to the site showed maybe 23 barely discernable parking spaces; 10 parking spaces on the north and south sides of the site and three parking spaces on the east side of the site. The proposed nightclub shares the 3,960-square foot one-story commercial strip building with a Chinese restaurant. The occupancy rate of the nightclub may be 84 and the occupancy rate for the restaurant may be 40; the applicant will confirm these occupancy rates. Based on these tentative occupancy rates the total parking required for the nightclub is 42 parking spaces (one space per two occupants) and 14 parking spaces (one space per three occupants) for the restaurant for a total of 56 parking spaces, which is 31 parking spaces short of the required parking for this site. The applicant will need to apply for either a variance, an off-street parking agreement or a combination of the two to meet the UZC's parking standards. The UZC requires off-street parking space to be located no more than 600 feet from the building or use it is intended to serve, measured along the shortest legal, practical walking route. The aerial does not show the wooden fence that separates the site from the north abutting TF-3 and SF-5 zoned single-family residences. The staff's trip to the site showed no screening of the dumpster(s), which were placed up against the north side of the site. The UZC requires dumpsters and refuse receptacles to be located a minimum of 20 feet from any property zoned TF-3 or more restrictive and it requires solid screening around dumpsters. The site is completely paved over with no opportunity for landscaping. There are no on -ground parking stops or a rail barrier to prevent cars parked on the south side of the site, along Pawnee Avenue, from overlapping into the right of way where the sidewalk would continue from the abutting east and west properties.

LC zoned businesses are located along this relatively short portion of Pawnee Avenue between South Southeast Boulevard (west side) and the I-135 interchange (east side). The LC zoned business include a Burger King (built 1996) and Spangles (built 1986) fast food restaurants, a Mexican restaurant (built 1956), a Chinese restaurant, a commercial box partially occupied by a Doller General retail store (formerly Howards Grocery and then Checkers Grocery, built 1968), Big Bob's flooring outlet (built a car wash(built 1966). Two SF-5 zoned single-family residences (built 1930s) are located east of the site along Pawnee Avenue. A TF-3 and SF-5 zoned single-family residences (built mostly mid-1950s, part of a SF-5 single-family residential neighborhood) abut the north side of the site. The nearest nightclub or drinking establishment is located approximately a quarter-mile west of the site at 1507 and 1527 East Pawnee Avenue. A Conditional Use, CON2016-00030, is scheduled later this year for 1507 and 1527 East Pawnee Avenue.

**CASE HISTORY:** The site is located on Lots 28, 29 and 30 together with the half vacated alleys adjacent on the north and east, Block B, Bomhoff Addition, which was recorded with the Register of Deeds January 23, 1953. Oral history of the site indicates the site has been a drinking establishment or a nightclub off and on since the late 1950s with the longest tenured being called the Golden Knight. The site currently does not have a liquor or entertainment license and is vacant.

**ADJACENT ZONING AND LAND USE:**

NORTH: LC, TF-3, SF-5	Flooring outlet store, self-serve laundry service, single-family residences
SOUTH: LC, MF-29, SF-5	Fast food restaurant, retail box, single-family residences
EAST: LC, SF-5	Restaurant, fast food restaurant, pay day loan, liquor store, car wash, single-family residence
WEST: LC	Self-serve laundry service, fast food restaurant, K-15 highway

**PUBLIC SERVICES:** The site has access off the paved four-lane, with a center turn lane, arterial Pawnee Avenue. Pawnee Avenue intersects with the major arterial Southeast Boulevard/K-15 highway located approximately 270 feet west of the site and the I-135 interchange located approximately 850 feet east of the site. All utilities are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The "Community Investment Plan's" (Plan, adopted November 19, 2015) shows the site located within the "Established Central Area." This area is comprised of the downtown core and the mature neighborhoods surrounding it in a roughly three mile radius. The established central area is the focus area for the Wichita Urban Infill Strategy. The established central area encourages a mixed-use development area with a focus on office, retail, hospitality, government services, high-density residential, and entertainment, cultural, and civic facilities and activities. A nightclub is an entertainment facility.

The "Community Investment Plan's 2035 Wichita Future Growth Map" depicts the site as "commercial." The commercial designation encompasses areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality. Convenience retail, restaurants, small offices, and personal service uses are located in close proximity to, and potentially mixed with, residential uses. A nightclub is an appropriate use of the commercial designation.

Locational criteria for commercial development include three key elements: development pattern, land use compatibility, and design. The development pattern in the area is small LC zoned businesses located along this relatively short portion of Pawnee Avenue between South Southeast Boulevard (west side) and the I-135 interchange (east side). The proposed nightclub is small enough to be considered a local business that will generate less traffic than the area's two fast food restaurants. SF-5 zoned single-family residences abut the north side of the site, thus the Conditional Use request. There are no less intrusive businesses or higher density residential uses located between the proposed nightclub and those closest single-family residences. This proximity could be a potential source of nuisance for the residential zoned properties. The site and the north abutting single-family residential neighborhood do not abut a common street, which lessens the possibility that the customers of the proposed nightclub will be parking in the abutting single-family residential neighborhood. There is no screening of the dumpster(s), which were placed up against the north side of the site. The UZC requires dumpsters and refuse receptacles to be located a minimum of 20 feet from any property zoned TF-3 or more restrictive and it requires solid screening around dumpsters. The site is completely paved over with no opportunity for landscaping. There are no on-ground parking stops or a rail barrier to prevent cars parked on the south side of the site, along Pawnee Avenue, from overlapping into the right of way where the sidewalk would continue from the abutting east and west properties.

**RECOMMENDATION:** If approved the request would re-establish a drinking establishment – nightclub on the site. Typically in the older neighborhoods, parking is a critical consideration for recommending approval as is the proximity of a church or place of worship, public park, public or parochial school or residential zoning district. The site does not have the required parking spaces. The applicant will need to apply for either a variance, off-street parking agreements or a combination of the two to meet the UZC's parking standards. It is unknown how the site's past history as a drinking establishment or nightclub will affect the neighbors' opinion of the current application. Based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a nightclub be **APPROVED**, with the following conditions:

- (1) The site shall be developed with an approved revised site plan, showing, but not limited to, the required parking spaces, locating dumpsters 20 feet from the north abutting SF-5 zoned properties, solid screening with a solid screening gate around the dumpsters, the solid wooden fence, and a rail to prevent cars parked on the south side of the site, along Pawnee Avenue, from overlapping into the right of way. No outdoor seating, outdoor speakers or outdoor entertainment is permitted. The site plan must be submitted for review within 60-days of approval by the appropriate governing body.
- (2) The use of the site as a nightclub shall not be permitted until the applicant confirms the occupancy rates of the nightclub and the restaurant.
- (3) The use of the site as a nightclub shall not be permitted until the applicant provides written agreements for 31 off-site or shared parking, a variance is approved or a combination of the two. The amount of needed off-site parking is subject to change based on the confirmation of the occupancy rates of the nightclub and the restaurant.
- (4) The use of the site as a nightclub shall not be permitted until the parking lot is restriped and a metal rail is installed along the site's Pawnee Avenue frontage.
- (5) The use of the site as a nightclub shall not be permitted until dumpsters are located 20 feet from the north abutting SF-5 zoned properties and solid screening (as defined in the UZC) with solid screening gates are installed around the dumpsters.
- (6) The applicant shall obtain all required state, local and other applicable permits and inspections.

- (7) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** LC zoned businesses are located along this relatively short portion of Pawnee Avenue between South Southeast Boulevard (west side) and the I-135 interchange (east side). The LC zoned business include a Burger King (built 1996) and Spangles (built 1986) fast food restaurants, a Mexican restaurant (built 1956), a Chinese restaurant, a commercial box partially occupied by a Doller General retail store (formerly Howards Grocery and then Checkers Grocery, built 1968), a Big Bob's flooring outlet (built 1956) a self-serve laundry service (built 1957), pay day loan (built 1999), a liquor store (built 1967), and a car wash(built 1966). Two SF-5 zoned single-family residences (built 1930s) are located east of the site along Pawnee Avenue. A TF-3 and SF-5 zoned single-family residences (built mostly mid-1950s, part of a SF-5 single-family residential neighborhood) abut the north side of the site. The nearest nightclub or drinking establishment is located approximately a quarter-mile west of the site at 1507 and 1527 East Pawnee Avenue.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned the LC, which is meant to accommodate retail, commercial, office and other complementary uses. If approved the request would re-establish a drinking establishment – nightclub on the site.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** SF-5 zoned single-family residences abut the north side of the site, thus the Conditional Use request. There are no less intrusive businesses or higher density residential uses located between the proposed nightclub and those closest single-family residences. This proximity could be a potential source of nuisance for the residential zoned properties. Typical concerns about tavern/drinking establishment/nightclub include bad behavior resulting from unlimited liquor sales, the noise from music and dancing, and the hours of the nightclub having a detrimental impact on the residential neighborhood.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The "Community Investment Plan's" (Plan, adopted November 19, 2015) shows the site located within the "Established Central Area." This area is comprised of the downtown core and the mature neighborhoods surrounding it in a roughly three mile radius. The established central area is the focus area for the Wichita Urban Infill Strategy. The established central area encourages a mixed-use development area with a focus on office, retail, hospitality, government services, high-density residential, and entertainment, cultural, and civic facilities and activities. A nightclub is an entertainment facility.

The “Community Investment Plan’s 2035 Wichita Future Growth Map” depicts the site as “commercial.” The commercial designation encompasses areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality. Convenience retail, restaurants, small offices, and personal service uses are located in close proximity to, and potentially mixed with, residential uses. A nightclub is an appropriate use of the commercial designation.

Locational criteria for commercial development include three key elements: development pattern, land use compatibility, and design. The development pattern in the area is small LC zoned businesses located along this relatively short portion of Pawnee Avenue between South Southeast Boulevard (west side) and the I-135 interchange (east side). The proposed nightclub is small enough to be considered a local business that will generate less traffic than the area’s two fast food restaurants. SF-5 zoned single-family residences abut the north side of the site, thus the Conditional Use request. There are no less intrusive businesses or higher density residential uses located between the proposed nightclub and those closest single-family residences. This proximity could be a potential source of nuisance for the residential zoned properties. There is no vehicular or pedestrian access from the site to the north abutting single-family residential neighborhood, which lessens the possibility that the customers of the proposed nightclub will be parking in the abutting single-family residential neighborhood. There is no screening of the dumpster(s), which were placed up against the north side of the site. The UZC requires dumpsters and refuse receptacles to be located a minimum of 20 feet from any property zoned TF-3 or more restrictive and it requires solid screening around dumpsters. The site is completely paved over with no opportunity for landscaping. There are no on ground parking stops or a rail barrier to prevent cars parked on the south side of the site, along Pawnee Avenue, from overlapping into the right of way where the sidewalk would continue from the abutting east and west properties.

- (5) **Impact of the proposed development on community facilities:** It is possible that approval of this request could result in an increased demand for police services.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.

**MCKAY** moved, **RAMSEY** seconded the motion, and it carried (12-0).

9. **Case No.: CON2016-00027** - Edward and Nancy Robinson (owners) request a County Conditional Use for an Accessory Apartment on RR Rural Residential zoned property on property described as:

That part of the Northwest Quarter of Section 10, Township 25 South, Range 2 East of the Sixth Principal Meridian, Sedgwick County, Kansas, described as commencing at the Northwest corner of said Northwest Quarter; thence South 00° West, along the West line of said Northwest Quarter, 770.52 feet for a place of beginning; thence North 89°43'35" East, parallel with North line of said Northwest Quarter, 1424.20 feet to the Westerly right of way line of the Oklahoma, Kansas, and Texas Railroad; thence South 30°02' West, along said Westerly right of way line, 463.31 feet to a point 1170.52 feet South of the North line of said Northwest Quarter, as measured parallel with the West line of said Northwest Quarter; thence South 89°43'35" West, 1192.31 feet to the West line of said Northwest Quarter; thence North 00° East, along the West line of said Northwest Quarter, 400 feet to the place of beginning.

**BACKGROUND:** The applicant is requesting a Conditional Use for an accessory apartment to be built on the subject property. The unplatted property is zoned RR Rural Residential and is approximately 11.8 acres. It is currently developed with a single-family residence, post frame building, garden tool shed/kennel, fish pond water feature and a lagoon for the septic. The subject site is located on the east side of Greenwich Road, south of East 117<sup>th</sup> Street North. The Sedgwick County site is not located within any Zoning Area of Influence.

The Wichita-Sedgwick County Unified Zoning Code ("UZC") defines an "accessory apartment" (Art. II. Sec. II-B.1.b) as a dwelling unit that may be wholly within, or may be detached from a principal single-family dwelling unit. Accessory apartments are also subject to supplementary use regulation Art. III. Sec. III-D.6.a (1) a maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling unit that may be within the main building, within an accessory building or constructed as an accessory apartment; (2) the appearance of an accessory apartment shall be compatible with the main dwelling unit and with the character of the neighborhood; (3) the accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling unit, and the ownership shall not be divided or sold as a condominium and (4) the water and sewer service provided to the accessory apartment shall not be provided as separate service from the main dwelling. Electric, gas, telephone and cable television utility service may be provided as separate utility services.

The surrounding properties to the north, south, east and west are large tracts zoned RR. The uses include single-family residences, agriculture fields and farming/ranch operations with improvements.

The applicant submitted an existing site plan showing the location of existing structures and the 50-foot X 50-foot lagoon. The applicant also submitted a proposed site plan which identifies the location of the new 30-foot X 48-foot residential designed manufactured home and new 28-foot X 33-foot detached two-car garage.

**CASE HISTORY:** The subject property is an unplatted large lot.

**ADJACENT ZONING AND LAND USE:**

NORTH: RR	Large tract, Single-family residences with associated buildings
SOUTH: RR	Large tract, Single-family residences with associated buildings
WEST: RR	Single-family residence, agricultural fields and associated buildings
EAST: RR	Large tract, agricultural fields with residential and associated buildings



**PUBLIC SERVICES:** The subject site has access to North Greenwich Road which is an arterial paved street. The property is served by a lagoon for sewage and is located in Sedgwick County Rural Water District #01.

**CONFORMANCE TO PLANS/POLICIES:** The “2035 Community Investments Plan” (Plan) identifies the subject site as being in the Rural Area. This category encompasses land outside the 2035 urban growth areas for Wichita and the small cities. Agricultural uses, rural-based businesses, and larger lot residential exurban subdivisions likely will be developed in this area. Such development should occur in accordance with the *Urban Fringe Development Standards for Wichita and Sedgwick County*. This category identifies Wichita’s urban fringe areas that are presently undeveloped but have the potential to be developed by the year 2035, based upon Wichita population growth projections and current market trends. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, with the following conditions:

- (1) The accessory apartment (residential designed manufactured home) and detached garage shall remain accessory to and under the same ownership as the principal single-family residence (located at 11646 N. Greenwich Road) and the ownership shall not be divided or sold as a condominium. The appearance of the accessory structure shall be compatible with the main dwelling.
- (2) The water and sewer service provided to the accessory apartment shall not be provided as separate services from the main dwelling. Electric, gas, telephone and cable television utility service may be provided as separate utility services. The applicant shall have the MABCD review the status of the existing lagoon.
- (3) The applicant shall obtain all applicable permits including, but not limited to: building, health and zoning. This will include turning in plans for review and approval by the MABCD for the placing of the accessory apartment.
- (4) Development and maintenance of the site shall be in conformance with the approved site plan.
- (5) If the accessory apartment is not in place within 12 months after final approval, or if the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** The subject site is located in Sedgwick County in an RR zoned area with lots ranging from +/- 5 acres to 80 acres. Development is a mix of large lot single-family residential and farming/ranching operations.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The subject site is currently zoned RR which permits the existing single-family residence. The property could continue to be used for one single-family residence; the depth of the property easily accommodates an accessory apartment and the detached garage and additional required parking space. The neighbor at 11501 E. 117<sup>th</sup> Street has e-mailed his objection to allowing a “double-wide” to be placed on the property. Residential designed manufactured homes are allowed in RR zoning districts.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** This appears to be the first request for an accessory apartment in this neighborhood. Approval of the request should not detrimentally impact nearby properties. The conditions of approval should minimize any anticipated detrimental impacts.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The “2035 Community Investments Plan” (Plan) identifies the subject site as being in the Rural Area. This category encompasses land outside the 2035 urban growth areas for Wichita and the small cities. Agricultural uses, rural-based businesses, and larger lot residential exurban subdivisions likely will be developed in this area. Such development should occur in accordance with the *Urban Fringe Development Standards for Wichita and Sedgwick County*. This category identifies Wichita’s urban fringe areas that are presently undeveloped but have the potential to be developed by the year 2035, based upon Wichita population growth projections and current market trends. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.
- (5) **Impact of the proposed development on community facilities:** Community facilities are the public streets in the area, police and fire services, none of which will be noticeably impacted by another residence being built on the site. There is no public water or sewer service available to the unplatted area.

**SCOTT KNEBEL**, Planning Staff presented the Staff Report.

**RICHARDSON** asked if the requirement that a residential design manufactured home has to be installed on a permanent foundation is codified somewhere. He referenced the e-mail from the neighbor attached to the Staff Report.

**KNEBEL** said yes, in Section IV. D. of the UZC. He added that there are nine criteria required to meet the definition of residential design manufactured home.

**DAILEY** asked what happens if the family no longer needs the structure. Can they then apply for a lot split?

**KNEBEL** said no, a lot split would not be allowed. He added that this is an application for a permanent accessory dwelling (as opposed to a temporary unit that is usually tied to some type of care giving) so it can be rented out when the family is through with it.

**EDWARD ROBINSON, 11646 NORTH GREENWICH ROAD, VALLEY CENTER, APPLICANT** said he would stand for questions since he felt that Mr. Knebel covered everything.

**FOSTER** suggested the applicant try to save the mature trees to provide a buffer from the nearby residences.

**RICHARDSON** asked the applicant if they were in agreement with staff recommendations.

**ROBINSON** responded yes.

**ELLISON** asked about the design of the structure.

**ROBINSON** said it will not look like a 1970's trailer it will look like a stick-built home although it is a double-wide mobile home that will be put on a permanent foundation.

**MOTION:** To approve subject to staff recommendation.

**TODD** moved, **ELLISON** seconded the motion, and it carried (8-0).

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- 10. Case No.: CON2016-00028** - Kenneth E. and Marilyn B. Pauly Revocable Trust, c/o Kenneth and Marilyn Pauly, Trustees; Keith and Marga Harrington Trust, c/o Keith A. Harrington, Trustees; Lemon Family Farm, LLC, c/o Roger W. Lemon Jr. Manager; Occidental Chemical Corporation, c/o Robert Peterson, President (applicants) Milo M. Unruh Jr. (agent) request a County Conditional Use for Mining and Quarrying, removal of salt water, from RR Rural Residential zoned properties on properties described as:

The North Quarter of the Southwest Quarter of Section 29, Township 29 South, Range 2 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas AND All of the Southeast Quarter of the of the Southwest Quarter of Section 20; and all of that part of the South half of the Southeast Quarter of Section 20 EXCEPT the East 17.6 acres thereof all in Township 29 South, Range 2 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas AND All that part of the Northwest Quarter Section 29 of Township 29 South, Range 2 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, lying North of the present township road EXCEPT those portions of the above described tracts in such excepted out tracts are legally described to wit: A tract in the Southeast Quarter and the Southwest Quarter of Section 20, Township 29 South, Range 2 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas described as beginning at the South Quarter corner of said Section 20; thence North 89 degrees 56' 38" East along the South line of said Southeast Quarter, 33.75 feet; thence North 1 degree 02' 24" East 179.19'; thence South 87 degrees 11' 48" West 476.43' feet; thence South 1 degree 23' 8" East, 155.51 feet to the South line of said Southwest Quarter; thence South 89 degrees 56'

38" East along the South line of said Southwest Quarter, 435.10 feet to the point of beginning, also a tract in the Northwest Quarter of Section 29, Township 29 South, Range 2 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, described as follows: Beginning at the North Quarter corner of said Section 29; thence North 89 degrees 56' 38" West along the North line of said Northwest Quarter 435.10 feet; thence South 1 degree 23' 8" East 298.19 feet; thence North 89 degrees 21' 26" East 432.84 feet to the East line of said Northwest Quarter; thence North 00 degrees 57' 50" West, 292.86' feet to the point of beginning AND The Northwest Quarter of Section 29, Township 29 South, Range 2 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, EXCEPT the North 20 acres and EXCEPT a portion beginning at a point on the West line of the Northwest Quarter of Section 29, Township 29 South, Range 2 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, 458 feet North of the Southwest corner of said Northwest Quarter; thence North along the West line of said Northwest Quarter; thence north 00 degrees 00' East, 662.27'; thence South 88 degrees 35' East, 659.74'; thence South 00 degrees 00' West parallel to the West line of said Northwest Quarter 662.27 feet; thence North 88 degrees 35' West, 659.74 feet to the point of beginning.

Tract 2:

The Southwest Quarter EXCEPT a tract 13 rods square in the Southwest corner for Cemetery AND all that part of the Southwest Quarter of the Northwest Quarter lying south of the center line of the Ninnescah River, in Section 30, Township 29 South, Range 2 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas

Tract 3:

Beginning at the Southeast corner of the Northeast Quarter of Section 30, Township 29, Range 2 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas; thence North to the Northeast corner of said Quarter Section; thence in a Southwesterly direction down the center line of the Ninnescah River to a point 79 rods and 11 feet East of the West line of said Section; thence South to the South line of the North Half of said Section; thence East to the corner of said Section; thence South 650.5 feet; thence East to the East line of said Section; thence North to the point of beginning.

Tract 4:

The West 53 1/3 rods of the Northwest Quarter and the West 53 1/3 rods of the North half of the Southwest Quarter of Section 24, and all of Section 23, Township 29 South, Range 3 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas EXCEPT the following described tracts: Beginning at the Northeast corner of the Northwest Quarter of Section 23, Township 29, Range 3 West; thence South 540 feet; thence West parallel to the North line of the Northwest Quarter of Section 23, 280 feet; thence North parallel to the West line of the Northwest Quarter of Section 23, 540 feet; thence East on the North line of the Northwest Quarter of Section 23, 280 feet to the point of beginning AND EXCEPT a tract in the Southwest Quarter of Section 23, Township 29, Range 3 West beginning 445 feet East of the Southwest corner of the Southwest Quarter; thence Northeast 529 feet; thence East 313 feet; thence North 354 feet; thence West 388.20 feet; thence Northeast along the Southeasterly K-42 Highway right of way line 1,032.75 feet; thence Southeast 502.42 feet; thence South 1,500 feet; thence West 1,310 feet to the point of beginning

AND EXCEPT That part of the Southeast Quarter of Section 23, Township 29, Range 3 West beginning 35 feet North of the Southwest corner; thence North 850.39 feet; thence East 301.85 feet; thence Southeasterly 1272.55 feet to the South line; thence West 595 feet; thence North 437 feet; thence West 488 feet; thence South 402 feet; thence West 140 feet to the point of beginning AND EXCEPT a tract beginning at the Southwest corner of the Southeast Quarter of Section 23, Township 29, Range 3 West; thence East 628 feet; thence North 437 feet; thence West 488 feet; thence South 402 feet; thence West 140 feet; thence South 35 feet to the point of beginning EXCEPT for adjacent roads and the railroad right of way adjacent to K-42 Highway.

**BACKGROUND:** The applicants are requesting Conditional Use approval to amend the RR Rural Residential zoned site of Conditional Use CU-509. CU-509 permitted “mining and quarrying,” specifically the extraction of salt water from 454-acres of RR zoned tracts for 30-years with eight conditions; see attached Metropolitan Area Planning Commission (MAPC) Resolution, approved March 11, 1999. If approved the request would enlarge CU-509 to include another 480-acres of RR zoned land and to amend/modify the eight conditions. The Wichita-Sedgwick County Unified Zoning Code (UZC) permits mining and quarrying in the RR zoning district with Conditional Use approval.

The applicant’s color Exhibit B-1 (site plan) shows the two original tracts; the 288-acre Tract 1 (green tract) and the 166-acre Tract 2 (yellow tract). Both tracts are located north of 111<sup>th</sup> Street South and east of 215<sup>th</sup> Street West. Both sites generally abut the south side of the Ninnescah River, following the river northeast past 103<sup>rd</sup> Street South and within 650 feet of 183<sup>rd</sup> Street West. There is a gap between Tract 1 and Tract 2, which the applicants propose to fill with the additional 160-acre Tract 3 (red tract located between the green and yellow tracts). 215<sup>th</sup> Street West divides Sedgwick County into the Board of County Commissioner’s Districts (BoCC) 2 and 3. Properties located east of 215<sup>th</sup> Street West, such as Tracts 1, 2 and 3, are in BoCC 2. Properties located west of 215<sup>th</sup> Street West, such as Tract 4 (red tract by itself), are in BoCC 3. The proposed additional 320-acre Tract 4 is located approximately three-quarters of mile west of 215<sup>th</sup> Street West, on both the east and west sides of Kansas Highway K-42 and 239<sup>th</sup> Street West and north of 103<sup>rd</sup> Street South.

A summary of the proposed amendments (Exhibit B, pages 3-5) to the eight conditions of CU-509 are:

1. Has additional language stating that that the site will be developed in accordance with the rules, guidelines and regulations of the Kansas Department of Health and Environment (KDHE), but that the specific location of the lines and wells are subject to possible changes as development circumstances warrant.
2. Remains the same with the exception of allowing on-site wells to be no closer than 200 feet from adjoining properties if that property is not included as part of the Conditional Use and/or under ownership or lease by the applicants as prescribed by the rules, guidelines and regulations of KDHE.
3. Removes the restriction of having certain times and days for drilling and construction activities during the development phase of the sites. The applicants claim that since 1999 there has been new and approved drilling equipment, development methods and technology advances that have greatly reduced the noise generated from the equipment and eliminated the need for work hour and work day restrictions. The applicants goes on to elaborate those improvements in Exhibit B, pages 3, 4, 6, 7, 11, and 12
4. Remains the same.

5. Specifies that the noise emitted by equipment permanently installed on the site after drilling and development activities are completed shall not be audible beyond the property lines of the application area, except for those circumstances when occasional maintenance is required by KDHE; testing of wells is mandated.
6. Moves the start of the 30-year operational time from 1999 (ending in 2029) to the approval of CON2016-00028 by the MAPC or the BoCC (ending in 2046).
7. Is no longer needed as the applicant has stated that the public street right of way dedications have been completed.
8. Has additional language in regards to what would render the Conditional Use null and void.

The method of extraction in 1999 was hydro fracturing but is now done by mechanically drilling using coiled tubing and directionally guided horizontal drilling techniques. All extraction is limited to the applicants' properties and will not cross over into adjoining properties, staying no closer than 200 feet from the adjoining properties that are not in the application. No waste water is generated. The sites will not require an on-site sewer system. The pumping operations will be housed in 16-foot by 12-foot well houses that will be painted in earth tone colors. Each well house will have a process control system (PCS) computer that monitors, regulates and controls the operation. All of the PCS will be connected to a central control room located off of 95<sup>th</sup> Street South and 183<sup>rd</sup> Street West. In addition the operations will be checked daily by the applicants moving from well to well in a pickup truck. The extracted salt water is sent by underground pipeline, including a pipeline underneath the Ninnescha River, to the Occidental Chemical Chlor-alkali plant located approximately nine-miles northeast of the site at 6200 South Ridge Road. The pipeline underneath the Ninnescha River was installed late 2000 or early 2001, approximately 18 feet below the riverbed. The applicants have stated that prior to the pipeline being installed Occidental contacted various agencies including the Corp of Engineers, KDHE, Underground Injection Control, the Kansas Corporation Commission and the Kansas Division of Water Resources.

KDHE does not have regulations for the pipelines that carry the brine, but does consider these lines in their overall review of the operation of the facility. KDHE has stated that the brine at this facility is not particularly corrosive and the piping is of good quality steel, which makes leaks on these line a very low risk. All brine is corrosive in the presence of oxygen. However, the applicants have stated that the pipelines do not have corrosion because of two specific reasons: the brine's purity or lack of contaminants in the Occidental brine field, and; and, the pipeline is kept completely full of brine to exclude the presence of any oxygen. As previously noted solution mining operation, which includes the pipelines, is PCS monitored for flow rate and pressure. As previously noted daily field checks are also conducted by Occidental.

This portion of unincorporated, rural RR zoned Sedgwick County is located over a southwest portion of the geological feature known as the Wellington Formation, which extends over parts of McPherson, Harvey, and Sedgwick Counties. There are large deposits of salt in the Wellington Formation, which is currently being extracted by the applicants. One of the applicants, Occidental Chemical, has been extracting salt water from this area since 1962. There are currently 10 operating salt water extraction facilities located in the area. The area is developed primarily as agricultural fields with scattered farmsteads and a few large tract single-family residences. The Ninnescah River and its drainage tributaries impact a large portion of this area as evidence by most of the west site/tract being in the FEMA 100-year Floodplain and at least half of the east site/tracts also being located in the FEMA 100-year Floodplain.

**CASE HISTORY:** Conditional Use CU-509 permitted “mining and quarrying,” specifically the extraction of salt water from 454-acres of RR zoned tracts for 30-years with eight conditions; MAPC Resolution, approved March 11, 1999. The 454-acres are located north of 111<sup>th</sup> Street South and east of 215<sup>th</sup> Street West. Both sites generally abut the south side of the Ninnescah River, following the river northeast past 103<sup>rd</sup> Street South and within 650 feet of 183<sup>rd</sup> Street West. CON2012-00038 adjusted CU-509’s site plan to allow a cluster of wells as well as an in-line layout of wells. There has been no recorded violations reported to the Metropolitan Area Building and Construction Department (MABCD).

**ADJACENT ZONING AND LAND USE:**

North: RR      Ninnescah River, agricultural fields, scattered farmsteads  
South: RR      Ninnescah River agricultural fields, scattered farmsteads  
East:    RR      Ninnescah River agricultural fields, large tract single-family residences, scattered farmsteads  
West:    RR      Ninnescah River agricultural fields, large tract single-family residences

**PUBLIC SERVICES:** Parts of the sites are located in Rural Water District 5. There is no public sewer and the proposed operation will not require on-site sewer. Access to the sites are off of K-42, a paved two-lane Kansas highway or 111<sup>th</sup> Street South, a paved two-lane County highway. Access is also provided by the unpaved section line roads 199<sup>th</sup> Street West, 215<sup>th</sup> Street West, 239<sup>th</sup> Street West and 103<sup>rd</sup> Street South.

**CONFORMANCE TO PLANS/POLICIES:** The “2035 Urban Growth Concept Map” of the Comprehensive Plan identifies the general location as “rural.” The rural category encompasses land outside the 2035 urban growth areas for Wichita and the small cities. Agricultural uses, rural-based businesses, and larger lot residential exurban subdivisions likely will be developed in this area. Commercial/industrial development should be limited to the following: agricultural-oriented uses; rural home occupations; natural resource dependent; convenience services; highway-oriented services at interchange areas; or uses that need significant buffering from residential areas (to mitigate nuisance or hazard impacts).

The Plan discourages encroachment of land uses such as residential and recreation that would be negatively impacted by noise, dust, odor, light, and other impacts of agricultural operations into primarily agricultural areas outside the 2035 Urban Growth Areas. Industrial and commercial uses located in rural areas should be separate and distinct from lower-intensity lands uses and should provide appropriate screening and buffering to ensure compatibility among land uses.

**RECOMMENDATION:** Based upon the information available at the time the staff report was prepared it is recommended that the Conditional Use request for the extraction of salt water be **APPROVED** subject to the following conditions:

1. The extraction of salt water from the described 934-acre site shall be good for 30-years beginning the day of the final approval by the appropriate governing body. Upon the end of the permitted 30-years of the extraction of salt water from the site, the well houses and all equipment will be removed from site and it will be returned to its original state as agricultural fields along KDHE rules, guidelines, and regulations.
2. The site will be developed in accordance with the rules, guidelines and regulations of the Kansas Department of Health and Environment (KDHE) and other appropriate local, state and federal rules, guidelines and regulations. The site will be developed as indicated on the site plan, but that the specific location of the lines and wells are subject to possible changes as development circumstances warrant. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.
3. On-site wells will be no closer than 200 feet from adjoining properties if that property is not included as part of the Conditional Use and/or under ownership or lease by the applicants as prescribed by the rules, guidelines and regulations of KDHE. On-site wells shall be either in line or in a cluster pattern as shown on the site plan.
4. The applicant shall obtain all required permits and inspections as required by Sedgwick County, the State of Kansas and any needed federal agency for the extraction of salt from the site.
5. Noise emitted by equipment permanently installed on the site after drilling and development activities are completed shall not be audible beyond the property lines of the application area, except for those circumstances when occasional maintenance is required by KDHE; testing of wells is mandated.
6. If operations have not begun within one year of approval, the Conditional Use shall be null and void.
7. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void. Upon the receipt of a complaint that is determined to be a violation of the conditions of approval, the applicant shall be notified of the complaint and have 72 hours to contact zoning enforcement to address the complaint. Failure to address the validated complaint may lead to additional enforcement efforts.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: This portion of unincorporated, rural RR zoned Sedgwick County is located over a southwest portion of the geological feature known as the Wellington Formation, which extends over parts of McPherson, Harvey, and Sedgwick Counties. There are large deposits of salt in the Wellington Formation, which is currently being extracted by the applicants and sent by pipeline to the Occidental Chemical Chlor-alkali plant located approximately nine-miles northeast of the site at 6200 South Ridge Road. One of the applicants, Occidental Chemical, has been extracting salt water from this area since 1962. There are currently 10 operating salt water extraction facilities located in the area. The area is developed primarily as agricultural fields with scattered farmsteads and a few large tract single-family residences. The Ninnescah River and its drainage tributaries impact a large portion of this area as evidence by most of the west site/tract being in the FEMA 100-year Floodplain and at least half of the east site/tracts also being located in the FEMA 100-year Floodplain.



2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR. The RR zoning district accommodates agricultural uses, rural-based businesses, natural resource dependent uses, such as mining and quarrying and larger lot residential exurban subdivisions in areas where a full range of municipal facilities and services are not available and not likely to be available in the near future. The RR zoning district is generally compatible with the "rural" designation of the "2035 Urban Growth Concept Map" of the Comprehensive Plan.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The requested action permits an expansion of Conditional Use CU-509, the extraction of salt water. There have been no complaints filed with the MABCD or KDHE on CU-509, which would seem to indicate that the use has been integrated into this rural, unincorporated portion of southwest Sedgwick County. KDHE considers the applicant Occidental Chemical to be a careful and prudent operator.

There is a sinkhole located in an old brine field located approximately a quarter-mile south of the Occidental Chemical brine field offices, southwest of the intersection of 183<sup>rd</sup> Street West and 95<sup>th</sup> Street South. This old field where the sinkhole is located was operated before the regulations for these wells came into effect in 1979 and by a company other than Occidental. The regulations in effect are designed to prevent sinkholes and no sinkholes have occurred for wells operated under the regulations. Impacts of a sinkhole are potential brine contamination of groundwater and soil and damage to any property within the impact area of the sinkhole.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2035 Urban Growth Concept Map" of the Comprehensive Plan identifies the general location as "rural." The rural category encompasses land outside the 2035 urban growth areas for Wichita and the small cities. Agricultural uses, rural-based businesses, and larger lot residential exurban subdivisions likely will be developed in this area. Commercial/industrial development should be limited to the following: agricultural-oriented uses; rural home occupations; natural resource dependent, such as mining and quarrying; convenience services; highway-oriented services at interchange areas; or uses that need significant buffering from residential areas (to mitigate nuisance or hazard impacts).

The Plan discourages encroachment of land uses such as residential and recreation that would be negatively impacted by noise, dust, odor, light, and other impacts of agricultural operations into primarily agricultural areas outside the 2035 Urban Growth Areas. Industrial and commercial uses located in rural areas should be separate and distinct from lower-intensity lands uses and should provide appropriate screening and buffering to ensure compatibility among land uses.

5. Impact of the proposed development on community facilities: Existing or required facilities are in place to address anticipated demands on community facilities.

**BILL LONGNECKER**, Planning Staff presented the Staff Report. He reported that he has received calls regarding the request. He said staff has provided background and history on the application and also referred people to the applicant and KDHE for additional information. He also referred to the hand-out which was an e-mail from residents along 111<sup>th</sup> Street South.

**ELLISON** asked where the sinkhole was located on the map. He clarified that KDHE had no issues with the operation.

**LONGNECKER** said the sinkhole is not on the map and added that he did not look at the sinkhole. He said KDHE replied to him by e-mail that they consider the Occidental Chemical Corporation a prudent operator.

**MILO M. UNRUH, JR., ATTORNEY, ARN MULLINS UNRUH KUHN AND WILSON, AGENT FOR THE APPLICANTS, 300 WEST DOUGLAS** said since there may be some technical questions regarding the operation or the geology, he said Mike Ganoway, Occidental's Brine Field Supervisor and Tom Hansen, consulting geologist were present. He said the application consists of two parts, one of which was to extend the current CU-509 and the second is to allow two additional tracts to be added to the Conditional Use. He said the current CU has been in operation for 17 years without one objection or complaint being filed with this Commission, Sedgwick County Code Enforcement or with KDHE. He reiterated that KDHE has confirmed that Occidental Chemical Corporation is considered to be a careful and prudent operator.

**UNRUH** said the application is to give the applicants the opportunity to have sufficient salt water to continue operating 10-13 series of wells. He said brine (salt water) is one of the chemicals Occidental uses in its manufacturing operations. He said Occidental's products are used in everyday products including Tide, Clorox, Teflon coating, shampoo and municipal water purification systems. He said any activity that is performed on these tracts of land is subject to substantial regulatory review before anything is operated. He said the first step is securing a conditional use approval from the Planning Commission for mining and quarrying. He said if that is successful a lengthy permitting process and application are filed with KDHE. He said KDHE has regulations regarding where they can drill, how many series of wells they can drill, and the kind of casing, spacing and location. He said specifications are provided in the application which is then put up for public hearing. He said if steps one and two are successful, then construction of the well houses is supervised by the Metropolitan Area Building and Construction Department (MABCD).

**UNRUH** referred to the exes on the map and mentioned that they currently have five what is called eight spot series and four in-line galleries. He said since this map was made, Occidental has decided to develop only in-line galleries. He said that decision was made based on several factors including a 30% increase in the production of brine at the same production cost and advances in technology that have allowed them to eliminate loud diesel engines on equipment used during the constructions phase. He said Federal Regulations require a quieter diesel engine. In addition, he mentioned that they are now allowed to drill horizontally, which cuts down on the construction phase and well construction by almost one-third. He concluded by stating that five wells make one series.

**UNRUH** said it is important to note that no wastewater is created by the development and there is not continuous activity on the sites. He said they like to rotate through the different tracts and shut down one series before they bring another series on-line. He said plugging of the wells is mandated by KDHE's regulations. He said the normal life of a series is about 13-14 years. He said they are looking 30 years into the future to insure they have sufficient brine to continue production at the facility.

**UNRUH** concluded by stating that monitoring is important to Occidental, the neighbors and the regulatory bodies.

**MOTION:** To grant the speaker an additional one minute.

**RICHARDSON** moved, **DOOL** seconded the motion and it carried (8-0).

**UNRUH** continued by saying that all pipelines on the site are checked daily. He said flows and pressure are monitored by computers in each well house 24/7. He said any problem triggers an automatic shutoff. He added that KDHE requires mechanical and grammalogue testing. He said they believe the nature of the locations are compatible and said there have been no complaints with the current operation for the past 17 years. He respectfully requested that the application be granted.

**RICHARDSON** asked about the process and the source of the fresh water. He also asked about the volume of water on a daily basis.

**UNRUH** explained that the process is to inject fresh water into the salt formation which then dilutes the salt and turns it into brine which is in turn pumped through the pipelines to Occidental.

**MIKE GANOWAY, OCCIDENTAL CHEMICAL CORPORATION** said Occidental owns 18 different water wells spread throughout the sites. He said the volume of water varies between 500-700 gallons per minute.

**RICHARDSON** asked what was left after the process is finished, cavities underground as if it had been mined like the Salt Mines in Hutchinson.

**GANOWAY** responded that KDHE regulates the width and height (size) of the caverns that are left after the operation. He said the caverns would be dome/arch shaped through mining layered salts. He said the arched shape is a strong geometric structure. He mentioned the geomechanics which are the calculations that went into how wide and tall the structure can be and how much salt needs to be left in the roof of the structure. He said KDHE does those calculations and sets the regulations. He said the regulations are 300 feet wide and not less than 50 foot of salt in the roof which means they can only mine 150 feet.

**GANOWAY** briefly reviewed the processing of the brine once it reaches the facility.

**CHAIR NEUGENT** asked about the water used to remove contaminates.

**GANOWAY** said there is a ground water treatment plant with carbon beds at the facility.

**FOSTER** asked how close the horizontal drilling was to adjacent properties. He ask Mr. Hansen to “speculate” about the cause of the old sink hole.

**TOM HANSEN, CONSULTING GEOLOGIST, LICENSE #20** answered that the drilling must be at least 200 feet from adjacent properties. He said the sink hole happened before KDHE put in regulations.

**ELLISON** asked if natural gas would be injected back into the salt caverns.

**HANSEN** replied no, they are prohibited from doing that at this location. He said the salt in Hutchinson is deeper and thicker.

**JACQUALINE WEBER, 2815 N. WILD ROSE, WICHITA, KS** asked if they are drilling horizontally are they drawing from beneath adjacent properties. She said some soil salinity is good for crop growth.

**TRUDY DOLL, 20770 WEST 111<sup>TH</sup> STREET SOUTH, CLEARWATER, KS** indicated she had property adjacent to the yellow area on the map. She said she believes Occidental does follow the regulations; however, she said she has had problems with noise, not continually just part of the year, which she believes is her fault because she feels if she had talked to Mr. Ganoway they probably would have put up different vegetation to help muffle the sound. She worries about what happens under her residence. She said the neighbors want to be reassured that their water will be safe for their crops, livestock, yards and ponds. She said they also want assurance that the landscape will stay the same. She said she is also concerned about the foundation of her home. She said she wanted the Commission to be aware that there are homes in the area.

**ELLISON** asked if she was concerned that the applicant would encroach on her property.

**DOLL** responded when you hear about salt and brine you want to make sure that doesn't get into your livestock ponds. She said some people think their trees have died because salt is coming up from the ground but it sounds like it is contained when it is being sent to the facility.

**NORA WORTH, 20701 WEST 111<sup>TH</sup> STREET, SOUTH, CLEARWATER, KS** said they are concerned about water contamination in the future. She asked how changing the zoning on this property will affect their taxes; will they increase/lessen or whatever. She said the diagram/map shows everything to be located north of 111<sup>th</sup>, but the staff report refers to both north and south of 111<sup>th</sup>, which was right. She asked if adjacent property owners will be adversely affected by the "horizontal" drilling.

**CHAIR NEUGENT** asked staff to clarify the application request. She said there seems to be some confusion on the request itself.

**DIRECTOR MILLER** said the conditional use application is only for the areas outlined on the diagram/map. He said the zoning on the adjacent/abutting properties will not change. He said the County Assessor's Office assesses taxes on each individual property.

**FOSTER** asked about the depth of the water wells on her property.

**WORTH** commented she thought 40 feet.

**VICKI LARSEN, 11001 SOUTH 199<sup>TH</sup> STREET, WEST, CLEARWATER, KS** indicated where her home was located on the diagram. She asked for clarification about any encroachments onto her property.

**DIRECTOR MILLER** commented that if the application for a conditional use permit is approved, the applicant won't be able to do anything outside the areas indicated on the diagram/map. He said they will not be allowed to encroach on anyone else's private property.

**LARSEN** asked when the wells are plugged is the equipment removed or does it just stay there. She also asked how many wells have already been plugged. She said they dug a well on their property; however, were told they could not use it because it was chloride. So they wasted money digging the well. She also mentioned problems with livestock. She asked how long it will take to drill the wells and how much traffic they will have up and down their quiet road that is no longer quiet. She said they moved out to the country because of the peace and quiet.

**MILLER STEVENS** thanked members of the public for staying this length of time to give the Commission their comments because it shows their diligence and concern for their properties and she appreciates that.

**MIKE GANOWAY, OCCIDENTAL CHEMICAL CORPORATION, BRINE FIELD SUPERVISOR** said they didn't apply for a zone change because the conditional use permit allows them to use the land for other than what it is zoned for so the taxes on surrounding properties wouldn't change. He said there shouldn't be any changes in taxes for surrounding property owners.

**GANOWAY** said as far as groundwater contamination, they are regulated by KDHE, Bureau of Water Geology Department who regulates them and their concern is protection of groundwater.

**MOTION:** To give the speaker five more minutes for rebuttal.

**TODD** moved, **RICHARDSON** seconded the motion, and it carried (8-0).

**GANOWAY** briefly reviewed construction of the wells and monitoring activities. He said they will try to work with the neighbors on the location of the well houses and camouflaging them from surrounding neighbors with tree rows or other landscape screening.

**MOTION:** To approve subject to staff recommendation.

**DAILEY** moved, **DOOL** seconded the motion, and it carried (8-0).

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11. **Case No.: CUP2016-00012** - Mountaingate Brittany LLC, Spring Street LLC, Union Street LLC (owner) and Kaw Valley Engineering c/o Tim Austin (agent) request a City CUP amendment to DP-67 Parcel 2 to permit additional LC Limited Commercial uses and Warehouse, Self-Storage within the CUP's definition of shopping center described as:

LOT 2 EXCEPT THAT PART DESCRIBED AS BEGINNING AT THE NORTHWESTERLY CORNER OF LOT 2, SAID CORNER LYING ON THE EAST RIGHT OF WAY LINE OF WOODLAWN AVENUE, THENCE EAST FOR A DISTANCE OF 203.75 FEET TO THE SOUTHEAST CORNER OF LOT 1; THENCE SOUTH 127.11 FEET; THENCE WEST 215 FEET TO THE EAST RIGHT OF WAY LINE OF WOODLAWN AVENUE; THENCE NORTHEASTERLY 127.96 FT ALONG THE EAST RIGHT OF WAY LINE OF WOODLAWN AVENUE TO BEGINNING; ALONG WITH, THE NORTH 115 FEET OF THE WEST 609 FEET OF LOT 3, ALL IN BLOCK 1 NORTHBOROUGH, AN ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS.

**BACKGROUND:** The LC Limited Commercial (LC) zoned site is located within DP-67, the Northborough Community Unit Plan (CUP) at the southeast corner of East 21<sup>st</sup> Street North and North Woodlawn Boulevard. The applicant requests an amendment to the DP-67, Parcel 2 Proposed Uses. The uses are currently limited to “shopping center and/or offices, professional, personal services, comparison and convenience shopping, parking, seasonal nursery and garden center, indoor entertainment and recreation.” The applicant proposes the uses be amended to state: “shopping center shall mean all uses permitted by right in the Limited Commercial LC zoning district except for group residences and correctional placement residences; along with warehousing, self-storage, inside of an existing climate controlled building only, and subject to the supplemental use regulations of Section III-D.6.y of the Unified Zoning Code, except that a resident manager shall not be required.” The Unified Zoning Code (UZC) requires conditional use approval for self-storage warehousing in LC zoning. Because the application area is within a CUP which does not specifically permit self-storage warehousing, a CUP amendment can be done in lieu of the conditional use for the self-storage warehousing use.

The UZC supplementary use requirements for self-storage warehousing in LC zoning are: The use must be on an arterial street with arterial street access; building setbacks must be 35 feet from arterials and 20 feet from other streets; a 15-foot landscape street yard is required when adjacent to residential zoning; planning staff architectural review is required to ensure that storage buildings are compatible with surrounding development; storage doorways shall be setback 40 feet from residential zoning; parking is required at a rate of one space per 8,000 square feet plus one space per employee; all parking, driveways and drives shall be paved; lighting shall be shielded away from surrounding properties; all storage shall be within enclosed buildings; no activities such as garage sales shall be conducted; no vehicle or equipment service or repair shall be conducted on the premises; signs are limited to one per arterial street frontage and shall not exceed 20 feet in height or 50 square feet in surface area; the area shall be policed by the operator/owner to remove trash and debris; the facility shall not be used as a transfer and storage business where the use of vehicles is part of such business; a resident manager shall be on site to ensure conformance with conditions of approval; maximum building coverage is 45 percent and no individual or business shall lease more than 3,000 square feet of storage. The applicant anticipates placing the self-storage inside an existing building, and therefore does not see a need for 24-hour on-site management.

The existing DP-67 has building setbacks, landscaping, signage, lighting, trash screening, perimeter wall screening and other standards. The remainder of the CUP is zoned LC and GO General Office (GO) and developed primarily with retail, indoor recreation and entertainment, banking, office and restaurant uses. The northwest and southwest corners of East 21<sup>st</sup> Street North and North Woodlawn are also zoned LC and under CUPs (DP-56 and DP-35). The northeast corner of East 21<sup>st</sup> Street North and North Woodlawn is zoned SF-5 Single-family Residential and developed with condominium residences under DP-46.

**CASE HISTORY:** The property is platted as Northborough Addition, recorded August 9, 1977, and the CUP was originally approved March 11, 1975. It has been amended several times. The most recent amendment to Parcel 2 (Amendment #6) permitted seasonal nursery and garden centers. The most recent administrative adjustment to Parcel 2 permitted indoor recreation and entertainment.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LC, SF-5	Retail, banking, condominium and single-family residential
SOUTH:	LC, GO	Retail, office
EAST:	LC, GO	Retail, restaurant, indoor recreation
WEST:	LC, GO, SF-5	Nursery and garden center, banking, restaurant, office, church

**PUBLIC SERVICES:** The property has direct access to Woodlawn Boulevard, a four-lane principal arterial street with left-turn center lanes, and connects through the parking lot to 21<sup>st</sup> Street North, also a four-lane principal arterial street with left-turn center lanes. A right-turn lane is located at the intersection of Woodlawn Boulevard and 21<sup>st</sup> Street North.

**CONFORMANCE TO PLANS/POLICIES:** The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the mature neighborhoods within an approximate three-mile radius of the downtown core. The Plan encourages infill development within the Established Central Area that maximizes public investment in existing and planned infrastructure and services. The Plan's *2035 Wichita Future Growth Concept Map* identifies this location as "residential and employment mixed," and surrounded by "new residential." The residential/employment mix encompasses areas of land that likely will be developed or redeveloped by 2035 with uses predominately of a mixed nature. Due to the proximity of higher intensity business uses, residential housing types within this area likely will be higher density. Due to the proximity of residential uses, employment uses likely will have limited negative impacts associated with noise, hazardous emissions, visual blight and odor.

**RECOMMENDATION:** Based upon the information available prior to the public hearings, planning staff recommends that the request for an amendment to DP-67 Parcel 2 to allow self-storage warehouse use be **APPROVED**, with the following conditions:

- (1) Proposed Uses for Parcel 2 shall be amended to state: "shopping center shall mean all uses permitted by right in the Limited Commercial LC zoning district except for group residences and correctional placement residences; along with warehousing, self-storage, inside of an existing climate controlled building only, and subject to the supplemental use regulations of Section III-D.6.y of the Unified Zoning Code, except that a resident manager shall not be required."

- (2) The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days of approval or the request shall be considered denied and closed.
- (3) If the Zoning Administrator finds that there is a violation of any of the conditions of the CUP amendment, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the CUP amendment null and void.

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** The existing DP-67 has building setbacks, landscaping, signage, lighting, trash screening, perimeter wall screening and other standards. The remainder of the CUP is zoned LC and GO General Office (GO) and developed primarily with retail, indoor recreation and entertainment, banking, office and restaurant uses. The northwest and southwest corners of East 21<sup>st</sup> Street North and North Woodlawn are also zoned LC and under CUPs (DP-56 and DP-35). The northeast corner of East 21<sup>st</sup> Street North and North Woodlawn is zoned SF-5 Single-family Residential and developed with condominium residences under DP-46.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned LC with DP-67 use restrictions, which accommodates a wide range of commercial uses. The site could be developed with other uses permitted by right in LC zoning and permitted by the existing CUP.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** The proposed amendment to allow self-storage warehouse should have no impact on nearby property as the proposed use will be within an existing commercial building.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the site as within the Established Central Area - the mature neighborhoods within an approximate three-mile radius of the downtown core. The Plan encourages infill development within the Established Central Area that maximizes public investment in existing and planned infrastructure and services. The Plan's *2035 Wichita Future Growth Concept Map* identifies this location as "residential and employment mixed," and surrounded by "new residential." The residential/employment mix encompasses areas of land that likely will be developed or redeveloped by 2035 with uses predominately of a mixed nature. Due to the proximity of higher intensity business uses, residential housing types within this area likely will be higher density. Due to the proximity of residential uses, employment uses likely will have limited negative impacts associated with noise, hazardous emissions, visual blight and odor.
- (5) **Impact of the proposed development on community facilities:** The requested CUP amendment should have minimal impact on community facilities. Self-storage warehousing has a lower traffic impact than most typical LC retail uses.

SCOTT KNEBEL, Planning Staff presented the Staff Report.



**MOTION:** To approve subject to staff recommendation.

**TODD** moved, **DOOL** seconded the motion, and it carried (8-0).

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12. **Case No.: PUD2016-00005** - Michael and Tina Andra Living Trust (applicant/owner); Baughman Company, P.A. c/o Russ Ewy (agent) request to create a County PUD Planned Unit Development on RR Rural Residential zoned property on property described as:

Commencing at the Northwest Corner of the Northwest Quarter of the Northeast Quarter, Section 15, Township 28 South, Range 1 West of the 6th Principal Meridian; thence with an assumed bearing of South 01°38'53" West along the West line of the Northwest Quarter of said Northeast Quarter 40.02 feet, more or less; thence South 90°00'00" East parallel with the North line of the Northwest Quarter of said Northeast Quarter 365.00 feet, more or less, for a point of beginning; thence continuing South 90°00'00" East parallel with the North line of the Northwest Quarter of said Northeast Quarter 100.00 feet; thence South 01°38'53" West parallel with the West line of the Northwest Quarter of said Northeast Quarter 350.10 feet, more or less; thence South 90°00'00" East parallel with the North line of the Northwest Quarter of said Northeast Quarter 515.84 feet, more or less; thence South 01°07'30" West parallel with the East line of the Northwest Quarter of said Northeast Quarter 837.15 feet, more or less; thence North 89°52'32" West parallel with the South line of the Northwest Quarter of said Northeast Quarter 738.33 feet, more or less; thence North 01°38'53" East parallel with the West line of the Northwest Quarter of said Northeast Quarter 835.73 feet, more or less; thence South 90°00'00" East parallel with the North line of the Northwest Quarter of said Northeast Quarter 114.88 feet, more or less; thence North 01°38'53" East parallel with the West line of the Northwest Quarter of said Northeast Quarter 350.10 feet, more or less, to the to the point of beginning.

**BACKGROUND:** The undeveloped application area is in the unincorporated county and located south of West Macarthur Road, between South Ridge and South Hoover Roads. The southwest corner of the site is within mapped flood zone. The applicants propose rezoning this property from RR Rural Residential (RR) to PUD #50, the Andra Commercial Planned Unit Development (PUD). According to the Unified Zoning Code (UZY), a PUD is intended to:

- (1) Reduce or eliminate the inflexibility that sometimes results from strict application of zoning standards that were designed primarily for individual lots;
- (2) Allow greater freedom in selecting the means to provide access, light, open space and design amenities;
- (3) Promote quality urban design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations and land uses; and
- (4) Allow deviations from certain zoning standards that would otherwise apply if not contrary to the general spirit and intent of this Code.

The unplatted 14.9-acre site is used for agriculture and sits within the applicant's larger 38.8-acre site. The PUD proposes keeping the balance of the 38.8-acre site as an open-space buffer. The PUD (see attached) specifies that landscaping and berm screening identified on the PUD is to be approved by staff, and is contingent upon the surrounding area remaining as open space. The PUD states "The applicant

may define this area as a reserve when platted, and/or as a conservation easement, in order to preserve this open space.” The PUD anticipates the extension of municipal water and sewer and platting. Annexation into the City of Wichita will occur along with these actions. The PUD is limited to 45,000 square feet of building coverage, 75,000 square feet of building space, 45-foot maximum building height and 50-foot building setbacks.

The PUD demonstrates access from one 24-foot drive. Parking for the first 20,000 square feet is 115 paved spaces. Additional building space will be provided parking at the rate of one parking space per 333 square feet of building space, or one parking space per four occupants for community assembly use. Demonstrated overflow parking on the PUD may be surfaced with an all-weather surface other than paving. Signage will be per commercial district regulations under the County Sign Code or under GC General Commercial signage under the City Sign Code. LED, billboard, portable and off-site signs are prohibited. Uses in the PUD are limited to those in the SF-20 Single-family Residential (SF-20) zoning district and the following: nightclub (as restricted for an event center in the PUD), agriculture, community assembly, broadcast/recording studio, event center, farmers market, office, restaurant and retail. Overnight accommodations are permitted accessory to the multi-use facility. The nightclub is limited to the UZC definition of an event center, limited to 500 persons, limited to a rental venue, may allow the service of food and alcoholic beverages and may allow music and dancing. The PUD limits event center hours to 8:00 am to 1:00 am Friday and Saturday, and 8:00 am to midnight Sunday to Thursday. The PUD designated outdoor activity area is accessory to the event center and farmer’s market. Tents are permitted in the outdoor activity area. Use of the outdoor activity area and outdoor music is limited to the hours of 10:00 am to 10:00 pm and subject to the UZC compatibility noise standard. Outdoor speakers in this area are further limited to 8:00 pm and shall be oriented to the interior of the site. Outdoor lighting requires shielding away from surrounding properties and is limited to 30 feet in height.

All property surrounding the application area is owned by the applicant, zoned RR, and used for agriculture. One 0.44-acre home-site, split off from the original 40-acres, exists 150-feet northeast of the site. Property further north (across Macarthur Road) and further east of the site is in the City of Wichita, zoned SF-5 Single-family Residential (SF-5) and developed with urban scale residential lots. Property further south and further west of the site is zoned RR and used for agriculture and large-lot residences.

**CASE HISTORY:** None.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5	Single-family residential
SOUTH:	RR	Agriculture, large-lot residential
EAST:	RR, SF-5	Agriculture, single-family residential
WEST:	RR	Agriculture, large lot residential

**PUBLIC SERVICES:** The site has frontage along Macarthur Road, a paved, two-lane arterial at this location with a daily traffic count of 5,232. Municipal services are available to the north and east of the site. The PUD requires connection to public water and sewer for development. Platting is required for utility extension and building permits. Access improvements will be determined at the time of platting. A drainage plan will be required at the time of platting.

**CONFORMANCE TO PLANS/POLICIES:** The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies this location as within the 2035 Wichita growth area. The *2035 Wichita Future Growth Concept Map* identifies the site as “New Residential.” The Locational Guidelines of the Comprehensive Plan encourage commercial development at arterial street intersections, along highways and commercial corridors. This application meets the Comprehensive Plan Land Use Compatibility and Design recommendations regarding screening, buffering, access controls, noise and lighting controls and aesthetic considerations. The Plan’s *Priority Enhancement Areas for Wichita Infrastructure Projects Map* identifies this portion of Macarthur Road as a “Targeted Arterial,” and recommends considering the inclusion of site design features that increase the sense of quality of life through emphasis of visual character and aesthetic improvements.

**RECOMMENDATION:** Planning Staff worked with the applicant’s agent to modify this PUD request, ensuring compatibility with surrounding property and mitigation of potential impacts on nearby residential properties. The proposed open-space buffer keeps the PUD over 340 feet from nearby residential subdivisions. Based on information available prior to the public hearing, staff recommends the request be **APPROVED** subject to the following conditions:

- A. The applicant shall submit four revised copies of the PUD to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

- (1) The zoning, uses and character of the neighborhood: All property surrounding the application area is owned by the applicant, zoned RR, and used for agriculture. One 0.44-acre home-site, split off from the original 40-acres, exists 150-feet northeast of the site. Property further north (across Macarthur Road) and further east of the site is in the City of Wichita, zoned SF-5 and developed with urban scale residential lots. Property further south and further west of the site is zoned RR and used for agriculture and large-lot residences.
- (2) The suitability of the subject property for the uses to which it has been restricted: The site could be developed with single-family residences on 2-acre minimum size lots under the current RR zoning.
- (3) Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed PUD permits uses which could impact nearby property owners. However, the proposed open space buffer surrounding the PUD, along with required landscaping, screening and development limitations, should mitigate impact on nearby properties.
- (4) Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request will add mixed-use commercial development at the southwest Wichita City limit along W. Macarthur Road. Vehicle traffic and activity on the site could minimally impact Macarthur; mitigating development limits are included in the PUD. Denial of this request would presumably be a loss of economic opportunity for the landowner.

- (5) Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The adopted Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies this location as within the 2035 Wichita growth area. The *2035 Wichita Future Growth Concept Map* identifies the site as “New Residential.” The Locational Guidelines of the Comprehensive Plan encourage commercial development at arterial street intersections, along highways and commercial corridors. This application meets the Comprehensive Plan Land Use Compatibility and Design recommendations regarding screening, buffering, access controls, noise and lighting controls and aesthetic considerations. The Plan’s *Priority Enhancement Areas for Wichita Infrastructure Projects Map* identifies this portion of Macarthur Road as a “Targeted Arterial,” and recommends considering the inclusion of site design features that increase the sense of quality of life through emphasis of visual character and aesthetic improvements.
- (6) Impact of the proposed development on community facilities: The proposed development will increase traffic on this portion of West Macarthur Road. This portion of Macarthur can accommodate the proposed traffic increases which will occur at non-peak traffic hours. Access improvements will be determined at the time of platting. The proposed development could increase demand of public safety services at this location.

**SCOTT KNEBEL**, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.

**MCKAY** moved, **RAMSEY** seconded the motion, and it carried (12-0).

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**NON-PUBLIC HEARING ITEMS**

**13. Case No.: DER2016-00002 - Wireless Communication Master Plan Update.**

**Background:** Senate Substitute for House Bill No. 2131 was recently passed by the Kansas House and Senate. The bill has numerous State mandates regarding how local units of government can regulate wireless communication facilities. Wichita-Sedgwick County regulations of wireless communication facilities are based on the Wireless Communication Master Plan.

The following is a high-level summary of the State mandates that will need to be addressed through an amendment of the Wireless Communication Master Plan (WCMP) and the Unified Zoning Code (UZC). The bill prohibits the following established practices:

- 1) Requiring applicants to document that no colocation opportunity is available prior to permitting construction new facility.
- 2) Requiring applicants to demonstrate that a wireless facility addresses a wireless service provider need rather than being constructed as a speculative facility.
- 3) Evaluating the merits of an application based on colocation opportunities.
- 4) Requiring small cell facilities in lieu of macro facilities in visually/environmentally sensitive locations.

- 5) Requiring applicants to agree to removal of an unused facility after 12 months of disuse as a conditional of approval.
- 6) Prohibiting flashing white aircraft obstruction lights for nighttime use.
- 7) Requiring applicants to agree to permit colocation on their facility by other service providers as a condition of approval.

Additionally, the bill deems an application for a wireless communication facility approved if the application is not acted upon within 150 days for a new facility or 60-90 days (depending on type) for a colocation application. Finally, the bill requires equal treatment of wireless communication facilities with utility installations when applying to locate in right of way but establishes a right-of-way fee cap on local governments that is significantly lower than the fee charged utilities.

Staff recommends the following process to amend the WCMP and the UZC.

<u>Target Date</u>	<u>Task</u>
July 7, 2016	Advanced Plans Committee considers update to WCMP and amendments to UZC and makes recommendation to the MAPC
July 7, 2016	Request Metropolitan Area Planning Commission (MAPC) to set public hearing to consider update to WCMP and amendments to UZC
July 28, 2016	Notice of public hearing to consider update to WCMP and amendments to UZC published
August 18, 2016	MAPC public hearing to consider update to WCMP and amendments to the UZC
September 20, 2016	City Council considers update to WCMP and amendments to UZC
September 21, 2016	Board of County Commissioners considers update to WCMP and amendments to UZC
September 30, 2016	Ordinances and Resolutions updating WCMP and amending UZC published

**Recommended Action:** Set the date of the official public hearing to consider adoption of the Update to the Wireless Communication Master Plan as an amendment of the Comprehensive Plan along with the implementing amendments to the Unified Zoning Code for the regularly-scheduled meeting of the MAPC on August 18, 2016.

**Attachment:** Draft Update to the Wireless Communication Master Plan  
Draft Amendments to the Wichita-Sedgwick County of the Unified Zoning Code

**SCOTT KNEBEL**, Planning Staff presented the Staff Report.

**MOTION:** To set a public hearing date for August 18, 2016.

**TODD** moved, **RICHARDSON** seconded the motion, and it carried (8-0).

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The Metropolitan Area Planning Commission adjourned at 5:00 p.m.

State of Kansas            )  
Sedgwick County        ) <sup>ss</sup>

I, W. Dale Miller, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Dale Miller, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission